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Ruplin - cross

Q. Did you ask him what he was asked at these interviews?

A. Well, I asked him to relate the nature of the investigation that was going on.

Q. I understand.

But when he told you that he had been interviewed by compliance people, did you ask him what it was he had been asked in these interviews?

A. I don't know if I asked it specifically that way. But I think the idea was for him to relate to me what happened during the course of that investigation or the interviews, yes.

Q. Did Mr. Marzano tell you at all what he was asked at the interviews?

A. I believe he related to me that the interviews revolved around this situation of the money issue, you know, I want to say as I sit here now, that it had something to do with maybe a loan with a client or something like that. That's the best I recall of it.

Q. You recall that what he told you was that the AEFA compliance people had raised with him something about a loan with a client?

A. Correct.

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it was loans to or from, or what the exact specifics of the case. I just remembered that it had something to do with that.

Q. If he had told you that he had made a loan to a client, is that an activity that would create a problem for Axa?

A. Not necessarily.

Q. What if he had borrowed money from clients, would that have been something that would have created a problem for Axa?

A. Not necessarily.

Q. What if he had been involved with loans between clients; one client making a loan to or from another?

Would that have been something that would have been a problem for Axa?

A. I guess it would depend on the nature of the circumstances.

Q. Do you recall if he told you that he had been questioned about the signatures endorsements of clients of his on checks?

A. Now that you mention that, I believe that may have been discussed also, yes.

Q. Do you recall any more specifics than

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Ruplin - cross

Q. Do you recall, was he saying that AEFA had raised with him whether he had made a loan to a client?

A. I believe, you know, I don't recall the exact specifics. But it had something to do, if I recall, with a loan either to or from a client.

Q. Did you ask Mr. Marzano if he had ever made any loans to any clients?

A. I know I asked him to explain the circumstances of whatever happened.

Q. What did he tell you? What was his explanation if you remember?

A. I don't remember, as we sit here today, the exact specifics of the case. You know. And what it was.

Q. Do you recall that his explanation of this transaction sufficiently explained it insofar as you were concerned as to remove it as a question with respect to registering him with Axa?

A. I believe that my impression was that I felt it was a satisfactory explanation. Yes.

Q. Did he tell you that he had made any loans to any clients?

A. You know, I don't really recall whether

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that?

What did he say about that?

A. You know, I do not recall any specifics of it. I didn't really remember it until you just mentioned it now.

Q. Did he ever say to you that he had been accused of putting a client's endorsement on a check?

A. You know, I don't really recall if that was a specific, as I say, it sounds vaguely familiar now that you bring up the issue. But I don't recall the circumstances of it.

Q. Just so we're clear, so you don't recall the specifics of what he said to you about the signatures of clients, the endorsements on checks.

A. No.

Q. About whether the specifics of what the American Express people were asking him about that?

A. I don't recall as we sit here today, no.

Q. Did he ever tell you that he placed a client's signature and endorsement on a check?

A. No, I don't recall that.

36 (Pages 356 to 359)

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1 Ruplin - cross  
 2 Q. If an individual who was being  
 3 recruited indicated that they had placed a client's  
 4 signature as an endorsement on a check, is that  
 5 something that Axa would accept?  
 6 How would that affect the recruitment  
 7 process, do you think?  
 8 A. Well, I would think that if somebody  
 9 came right out and indicated that they put a  
 10 signature or essentially forged a signature on any  
 11 document or instrument, I would think that that  
 12 would be a major problem. We would not normally  
 13 pursue a candidate that would have an issue like  
 14 that.  
 15 Q. Now, if you look at Respondent's  
 16 Exhibit, I believe it's 5, that's the one that Mr.  
 17 Campbell first showed you.  
 18 A. Yes.  
 19 Q. Now, these are documents that Mr.  
 20 Marzano furnished to you; is that correct?  
 21 A. Correct.  
 22 Q. Were they unsolicited?  
 23 In other words, had you asked him to  
 24 get any of these things for you?  
 25 A. No. I don't believe I asked him

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1 Ruplin - cross  
 2 felt would shed additional light on the pending or  
 3 open investigation.  
 4 Q. Did you ever discuss the contents of  
 5 this letter with Mr. Marzano?  
 6 A. I believe so.  
 7 Q. Did you furnish a copy of this letter  
 8 to the home office?  
 9 A. Yes.  
 10 Q. So the Axa home office would have had  
 11 this letter as well; is that right?  
 12 A. Yes.  
 13 Q. You don't recall specifically  
 14 discussing it though with Mr. Marzano?  
 15 A. Well, I believe I did discuss it with  
 16 him, yes.  
 17 Q. Do you recall the substance of those  
 18 discussions?  
 19 A. Well, as I mentioned earlier, I think  
 20 that we spoke a number of times about the substance  
 21 of the pending investigation and his response to it.  
 22 Q. So this letter was part of his response  
 23 to questions you had about the substance of the  
 24 pending investigation; is that correct?  
 25 A. That's correct.

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1 Ruplin - cross  
 2 specifically for these documents. I think they were  
 3 provided during the course of our conversations  
 4 about the nature of the investigation that was  
 5 pending.  
 6 Q. Well, the first, and let's go through  
 7 them because they don't have numbers on them. But  
 8 the first document appears to be a letter of April  
 9 5, 2004 addressed to you from an attorney named  
 10 Richard Feldman at a firm called Todtman,  
 11 T-o-d-t-m-a-n, et al., let's just say for the  
 12 record.  
 13 Do you see that letter?  
 14 A. Yes.  
 15 Q. Do you recall receiving that letter?  
 16 A. Yes.  
 17 Q. Did Mr. Marzano hand you this letter or  
 18 did you receive this in the mail from Mr. Feldman  
 19 directly, do you recall?  
 20 A. I don't recall how I received it.  
 21 Q. Did you have any explanation or  
 22 advanced notice that you would be receiving this  
 23 letter before you got it?  
 24 A. I believe Mr. Marzano did indicate that  
 25 he was going to be giving me information that he

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1 Ruplin - cross  
 2 Q. Did you ever speak to Mr. Feldman?  
 3 A. No. Not that I recall anyway.  
 4 Q. Now, the next document is a letter  
 5 dated April 5, 2004 addressed to Mr. Marzano,  
 6 correct? And it's signed by an attorney named  
 7 Martin Kaplan.  
 8 Do you see that?  
 9 A. Yes.  
 10 Q. On a letterhead of a firm called Gusre,  
 11 G-u-s-r-e, Kaplan, et cetera?  
 12 A. Yes.  
 13 Q. Do you recall, did Mr. Marzano himself  
 14 furnish a copy of this letter to you as opposed to  
 15 you receiving it in the mail?  
 16 I ask it because it's not addressed to  
 17 you in the first instance.  
 18 A. Yes. I believe that was the case.  
 19 Q. Did you read this letter when you got  
 20 it?  
 21 A. Yes, I did.  
 22 Q. Did you furnish a copy of this letter  
 23 to the home office of Axa?  
 24 A. I believe so.  
 25 Q. Did you ever speak to Mr. Kaplan about

37 (Pages 360 to 363)

Page 364

1 Ruplin - cross  
 2 the contents of this letter?  
 3 A. Martin Kaplan?  
 4 Q. Correct.  
 5 A. No, I do not believe I did.  
 6 Q. Now, you see a reference in the first  
 7 sentence to Amex's counsel Eliot Good in the first  
 8 sentence in the letter.  
 9 A. Yes.  
 10 Q. And this letter is purporting or it  
 11 says in that sentence that he's relating an analysis  
 12 of conversations that Mr. Kaplan had with Mr. Good,  
 13 right?  
 14 A. It appears to be, right.  
 15 Q. Did you ever make any effort to contact  
 16 Mr. Good?  
 17 A. No.  
 18 Q. Other than your good fortune of meeting  
 19 him today, obviously.  
 20 A. No, I never did.  
 21 Q. Turn back several pages in the document  
 22 after Mr. Marzano's resume. And after a table or  
 23 chart that says assets under management.  
 24 See a couple of those graphs and stuff?  
 25 A. Yes.

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1 Ruplin - cross  
 2 Q. It's kind of the last several pages. I  
 3 guess it's the last three pages. One is a letter of  
 4 April 5, 2004 on the letterhead of something called  
 5 Seligson and Gianntazzio.  
 6 Do you see that letter --  
 7 A. Yes.  
 8 Q. -- dated April 5, 2004, signed by  
 9 Donald Gianntazzio?  
 10 A. Yes.  
 11 Q. Then the next thing is a letter on the  
 12 letterhead of Keyspan Corporation dated April 5,  
 13 2004.  
 14 A. Yes.  
 15 Q. And it looks like it's signed by  
 16 somebody named Wallace Parker, correct?  
 17 A. Right.  
 18 Q. And his name is printed on the top  
 19 right corner of the letterhead?  
 20 A. Yes.  
 21 Q. Then there's another letter addressed  
 22 to Frank Marzano on Keyspan letterhead as well.  
 23 Looks like it's from someone named Robert Fani, I  
 24 believe, F-a-n-i?  
 25 A. Correct.

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1 Ruplin - cross  
 2 Q. Correct?  
 3 Now, were each of these letters  
 4 furnished to you by Mr. Marzano?  
 5 A. Yes, they were.  
 6 Q. Did you read them when you received  
 7 them?  
 8 A. Yes, I did.  
 9 Q. Did you furnish copies of them to Axa?  
 10 A. I believe so.  
 11 Q. Do you know what the purpose of these  
 12 letters were?  
 13 A. They were, you know, they were  
 14 character references.  
 15 Q. Did they have any meaning to you? Were  
 16 they in any way significant?  
 17 A. Well, I found them to be very  
 18 impactful, yes.  
 19 Q. So you felt these were people who were  
 20 making, frankly, complimentary statements about Mr.  
 21 Marzano and his integrity?  
 22 A. Yes.  
 23 Q. Did you ever know any of these  
 24 individuals who wrote these letters before you  
 25 received them?

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1 Ruplin - cross  
 2 A. No.  
 3 Q. Have you ever spoken to any of them?  
 4 A. No.  
 5 Q. Now, do you know Donald Gianntazzio?  
 6 Let's look at that letter first, right?  
 7 A. Okay.  
 8 Q. And that's on letterhead of Seligson  
 9 and Gianntazzio, correct?  
 10 A. Correct.  
 11 Q. Certified public accountants?  
 12 A. Hmm-hmm.  
 13 Q. I'm not going to read the letter into  
 14 the record. But he's very complimentary and talks  
 15 about Mr. Marzano's ethics and integrity, correct?  
 16 A. Correct.  
 17 Q. And how he thinks quite highly of him;  
 18 is that right?  
 19 A. That is true.  
 20 Q. And this meant something to you, is  
 21 that correct, at Axa when you got this?  
 22 A. Yes.  
 23 Q. Did you know when Mr. Gianntazzio wrote  
 24 in letter to you that he was a business partner of  
 25 Mr. Marzano's in a separate business?

38 (Pages 364 to 367)



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1 Ruplin - cross

2 A. I'm not sure whether I knew that at  
3 that time or not.

4 Q. Did you subsequently find that out?

5 A. Well, you just mentioned it now.

6 Q. I didn't tell you anything. I asked  
7 you a question.

8 A. Well, it sounds like you were saying  
9 that.

10 Q. Did you have any information from any  
11 sources when you got this letter or at any time  
12 before today that Mr. Giannitazio was Mr. Marzano's  
13 business partner?

14 A. I really don't recall if I did or not.

15 Q. Would it have had any impact on you  
16 when you read this letter that was a character  
17 reference for Mr. Marzano if you knew that this was  
18 coming from Mr. Marzano's business partner?

19 A. You know, it may have. I guess it  
20 would depend on the situation.

21 Q. Well, let me give you this  
22 hypothetical: If you got this letter and you were  
23 seriously considering hiring Mr. Marzano and you had  
24 even gotten to the point of making an offer to Mr.  
25 Marzano, and then you later discovered that Mr.

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1 Ruplin - cross

2 that have no basis in evidence before the  
3 panel.

4 THE CHAIRMAN: Mr. Zaretsky, you  
5 want to continue?

6 MR. ZARETSKY: Did I get an  
7 answer to the question? I don't know.

8 MR. CAMPBELL: Got an answer to  
9 the question.

10 Q. All right.

11 Did Mr. Marzano in describing this,  
12 remember this loan to a client that you think he  
13 told you about?

14 A. Yes.

15 Q. Did he tell you that a company that he  
16 and Mr. Giannitazio were partners and may have been  
17 involved in this loan transaction?

18 MR. CAMPBELL: Objection. Again,  
19 Mr. Chairman, he's got a question based on  
20 nothing. He didn't.

21 MR. ZARETSKY: It's not based on  
22 nothing.

23 MR. CAMPBELL: A loan to/from  
24 whatever. Something to do with a loan  
25 involving a client. Don't know what it was.

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1 Ruplin - cross

2 Giannitazio was, in fact, his business partner, and  
3 you discovered it through no disclosure by Mr.  
4 Marzano, would that have impacted the recruiting  
5 process at all?

6 A. In a negative way you mean?

7 Q. Correct.

8 A. Not necessarily. I don't think so.

9 Q. Do you think that --

10 MR. CAMPBELL: Mr. Chairman, if I  
11 can just interpose again, these are all very  
12 interesting hypotheticals. No foundation for  
13 them at all whatsoever by the way. You have  
14 no evidence one way or the other on this. If  
15 we can get evidence it will be Donald  
16 Giannitazio wasn't his partner certainly in  
17 April 2004, but is that right?

18 MR. MARZANO: Yes.

19 MR. CAMPBELL: We got a guy who's  
20 been sitting out there since 10 o'clock this  
21 morning from Denver. And we have to go  
22 through all of these hypotheticals  
23 foundation, groundless hypotheticals with  
24 this witness. I think it's just wasting  
25 time. We should move away from hypotheticals

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1 Ruplin - cross

2 And now he's building a whole hypothetical  
3 case around it that is not grounded, in fact,  
4 and asking the witness hypothetical  
5 questions. Not relevant.

6 THE CHAIRMAN: Go ahead, Mr.  
7 Zaretsky. Proceed, continue.

8 MR. ZARETSKY: Could you read the  
9 question back, please.

10 (Question read.)

11 Q. The loan transaction that he told you  
12 about --

13 A. Right.

14 Q. -- that was at issue?

15 A. Right.

16 I don't recall who the parties exactly  
17 were loaning to or from. And whether it was a firm  
18 or not, that I can't tell you.

19 Q. Do you remember him ever mentioning the  
20 name?

21 By the way, did you ever discuss with  
22 Mr. Marzano any of his outside business activities  
23 as part of the recruitment process?

24 A. Yes.

25 Q. Do you remember him mentioning the name

39 (Pages 368 to 371)

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1 Ruplin - cross  
 2 of an entity called GM Financial?  
 3 A. It doesn't sound familiar as we sit  
 4 here today.  
 5 MR. ZARETSKY: Just a moment, Mr.  
 6 Chairman.  
 7 I don't have any other questions,  
 8 Mr. Chairman. Thank you.  
 9 THE CHAIRMAN: Mr. Campbell?  
 10 MR. CAMPBELL: Thank you, Mr.  
 11 Chairman.  
 12 Mr. Ruplin, just a couple of  
 13 quick follow-ups.  
 14 Ruplin - redirect  
 15 REDIRECT EXAMINATION  
 16 BY MR. CAMPBELL:  
 17 Q. These meetings that you were describing  
 18 with various people at the home office at the  
 19 headquarters of Axa, is that something you do with  
 20 every potential recruit?  
 21 MR. ZARETSKY: Mr. Chairman --  
 22 THE CHAIRMAN: Answer the  
 23 question, please.  
 24 A. No.  
 25 Q. Is this something that you laid on

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1 refresh the witness' recollection by  
 2 suggesting traits that may jog his memory as  
 3 to a particular headhunter.  
 4 Excuse me, Mr. Chairman. Okay,  
 5 forget it. I misunderstood.  
 6 Q. Is there a person who works with Axa  
 7 who's in your building?  
 8 A. Yes. I mean, there are people.  
 9 MR. CAMPBELL: I'm not going to  
 10 make a lot of progress here, Mr. Chairman.  
 11 Don't worry about it. I'll drop it.  
 12 Q. Do you remember having a meeting with  
 13 Mr. Marzano in which he told you that he was  
 14 involved in an ongoing investigation while he was  
 15 still affiliated with American Express?  
 16 A. Yes.  
 17 Q. And is that the meeting that was  
 18 arranged by the headhunter?  
 19 A. I really don't recall.  
 20 Q. Do you recall having meetings with Mr.  
 21 Marzano after he actually separated from American  
 22 Express?  
 23 A. Yes.  
 24 Q. Are those the meetings that you were

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1 specially for Mr. Marzano?  
 2 A. Yes, it was.  
 3 Q. Why did you do that?  
 4 A. Well, because of the nature of the  
 5 inquiry that was pending on his NASD CRD, it  
 6 necessitated headquarter's review and approval be in  
 7 order to move forward in the process.  
 8 Q. Did you do it because you really wanted  
 9 to affiliate him if you could?  
 10 A. Yes.  
 11 Q. Let me see if I can jog your memory  
 12 about a couple of things that Mr. Zaretsky asked you  
 13 about.  
 14 You work with a headhunter as part of  
 15 your normal recruiting efforts?  
 16 A. Yes, I have. From time to time.  
 17 Q. See a headhunter who appears to be in  
 18 your own building downstairs?  
 19 A. Downstairs? I don't recall that, no.  
 20 Q. A gentleman of East Indian descent? I  
 21 beg your pardon. Someone who's affiliated with Axa?  
 22 MR. ZARETSKY: Object. Now, I  
 23 don't understand the question.  
 24 MR. CAMPBELL: I'm trying to

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1 describing in which you received the documents  
 2 contained in Respondent's Exhibit 5?  
 3 A. Yes.  
 4 MR. CAMPBELL: I have no further  
 5 questions, Mr. Chairman.  
 6 MR. ZARETSKY: No questions.  
 7 ARBITRATOR COHEN: I have a  
 8 question.  
 9 MR. ZARETSKY: I'm sorry. I  
 10 spoke too quickly.  
 11 RECROSS-EXAMINATION  
 12 BY MR. ZARETSKY:  
 13 Q. This meeting at the home office that  
 14 you described that was special because of the  
 15 inquiry...  
 16 A. Yes.  
 17 Q. Mr. Marzano didn't attend; did he?  
 18 A. Yes, he did.  
 19 Q. Was he asked questions about, well, did  
 20 you already have this CRD report?  
 21 A. Yes.  
 22 Q. At the time of that meeting had you  
 23 already talked to Mr. Marzano about his explanation  
 24 for what was on the CRD information?  
 25

40 (Pages 372 to 375)

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1 Ruplin - recross  
 2 A. Yes.  
 3 Q. Did you discuss it with the individuals  
 4 at that meeting?  
 5 A. Yes.  
 6 Q. Did Mr. Marzano make statements at that  
 7 meeting?  
 8 A. Yes.  
 9 Q. What did he say at that meeting?  
 10 A. I believe he reiterated the same things  
 11 that we discussed prior in answer to the pending or  
 12 open investigation.  
 13 Q. All of the things that you've already  
 14 testified to in response to my questions to you  
 15 about what specifics or explanation Mr. Marzano gave  
 16 you?  
 17 A. Correct.  
 18 Q. Nothing more than that?  
 19 A. I don't believe so. No.  
 20 Q. Did anyone ask him any questions at the  
 21 meeting that you recall?  
 22 A. Yes.  
 23 Q. What was he asked at the meeting?  
 24 A. Questions about the nature of his  
 25 business. Questions about the nature of the pending

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1 Ruplin  
 2 First of all, thank for your  
 3 testimony and thank you for coming today.  
 4 In your experience and to your  
 5 knowledge is it the obligation of the member  
 6 firm to provide any additional information  
 7 other than a U-5 and a CRD and/or both, and  
 8 is other information traditionally provided  
 9 to you when you go back to that firm to find  
 10 out about the prospective employee?  
 11 THE WITNESS: Obligation, no. I  
 12 don't think so.  
 13 ARBITRATOR COHEN: How about  
 14 tradition in your experience?  
 15 THE WITNESS: You know,  
 16 historically we've checked references in the  
 17 past of prior employers. And, you know, in  
 18 most cases they decline to give very much  
 19 information, you know. But, you know, in  
 20 some cases they have given information.  
 21 ARBITRATOR COHEN: Okay. Thank  
 22 you.  
 23 THE WITNESS: You're welcome.  
 24 THE CHAIRMAN: Thank you, Mr.  
 25 Ruplin. Thank you very much.

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1 Ruplin - recross  
 2 investigation. All the things that we've been  
 3 discussing.  
 4 Q. So all these things, those were  
 5 discussed at this meeting at the home office,  
 6 correct?  
 7 A. Yes.  
 8 Q. There was nothing more discussed at  
 9 that home office meetings than which you've already  
 10 testified to; is that correct?  
 11 A. Not that I recall.  
 12 Q. Just so I'm clear, the people who were  
 13 at that meeting were the ones you told us about  
 14 earlier as you can remember it.  
 15 Anthony Sages, Jim Bodovitz, and  
 16 Merrill Tesler, yes?  
 17 A. Yes.  
 18 THE CHAIRMAN: Yes or no?  
 19 THE WITNESS: Yes.  
 20 MR. ZARETSKY: No further  
 21 questions. Thank you.  
 22 THE CHAIRMAN: Thank you.  
 23 ARBITRATOR COHEN: Mr. Chairman,  
 24 I have one more question just for information  
 25 purposes.

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1 Ruplin  
 2 (Witness excused.)  
 3 THE CHAIRMAN: Mr. Campbell, call  
 4 your next witness, please.  
 5 (Short recess.)  
 6 THE CHAIRMAN: Back on the  
 7 record.  
 8 Mr. Campbell, will you call your  
 9 next witness, please.  
 10 MR. CAMPBELL: Mr. Chairman, Mr.  
 11 Marzano calls Mr. Rick Kundracik as the next  
 12 witness.  
 13 RICHARD KUNDRACIK, called on  
 14 behalf of the Respondent, being first duly  
 15 sworn, testified as follows:  
 16 THE CHAIRMAN: Mr. Kundracik, can  
 17 you give your name, address, and spelling for  
 18 the court reporter, please?  
 19 THE WITNESS: Richard Kundracik,  
 20 K-u-n-d-r-a-c-i-k. Address is 1290 Broadway,  
 21 Denver, Colorado 80203.  
 22 THE CHAIRMAN: Before we begin,  
 23 Mr. Campbell, I see Mr. Kundracik is  
 24 accompanied by another individual.  
 25 His name for the record?

41 (Pages 376 to 379)



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1 Ruplin  
 2 MR. CHASE: Donald Chase with  
 3 Morrison Cohen here in New York City, 909  
 4 Third Avenue, New York, New York. I am Mr.  
 5 Kundracik's attorney.  
 6 THE CHAIRMAN: I didn't get the  
 7 name of the firm.  
 8 THE WITNESS: Morrison Cohen.  
 9 THE CHAIRMAN: Very good.  
 10 ARBITRATOR COHEN: No conflict.  
 11 THE CHAIRMAN: Mr. Campbell, you  
 12 made proceed.  
 13 MR. CAMPBELL: Thank you, Mr.  
 14 Chairman.  
 15 DIRECT EXAMINATION  
 16 BY MR. CAMPBELL:  
 17 Q. Mr. Kundracik, with all apologies for  
 18 the amount of time that you have been kept waiting,  
 19 I thank you for being here this afternoon.  
 20 A. You're welcome.  
 21 Q. Frank also appreciates it as well.  
 22 I'll try to keep you for as little time as possible.  
 23 Can you please tell the panel --  
 24 THE CHAIRMAN: Can we switch  
 25 seats, do you mind?

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1 Kundracik - direct  
 2 MR. CHASE: No.  
 3 THE CHAIRMAN: Having you sit  
 4 close to the witness. Just leaning around  
 5 you.  
 6 THE WITNESS: I'll try to keep my  
 7 head back.  
 8 THE CHAIRMAN: Thank you. I'll  
 9 appreciate that.  
 10 Sorry, Mr. Campbell.  
 11 Q. Can you tell the panel what your  
 12 current business affiliation is, please, Mr.  
 13 Kundracik?  
 14 A. I am at present the vice president  
 15 national sales manager of MultiFinancial, an ING  
 16 broker-dealer headquartered in Denver.  
 17 Q. What was your position in March and  
 18 April of 2004?  
 19 A. Same.  
 20 Q. Have you been in arbitration before?  
 21 A. Yes.  
 22 Q. So you know that there are arbitrators,  
 23 that there are opposing counsel, and the gentleman  
 24 across from you is the court reporter?  
 25 A. We didn't have the luxury of that in

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1 Kundracik - direct  
 2 Denver. It was tape.  
 3 Q. We have the luxury of both today.  
 4 If you could direct your comments  
 5 generally to the panel when I ask you the questions.  
 6 A. Okay.  
 7 Q. You don't need to be looking at me.  
 8 Did you meet with Mr. Marzano in the  
 9 spring of 2004?  
 10 A. Yes.  
 11 Q. Can you tell the panel how it came  
 12 about that you met with Mr. Marzano?  
 13 A. We were introduced to Frank. And there  
 14 was an opportunity since we were conducting a  
 15 meeting of our reps in Philadelphia that Frank could  
 16 come down and visit with us from New York.  
 17 First time I met Frank was at dinner  
 18 in, excuse me, it was Philadelphia, and met for  
 19 dinner with Frank in Philadelphia.  
 20 Q. Did you call him or did he call you for  
 21 that first meeting?  
 22 A. I reached out to Frank a number of  
 23 times and never really connected with him. Our  
 24 recruiter at that time is who connected with him and  
 25 set up the meeting.

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1 Kundracik - direct  
 2 Q. Who was that recruiter?  
 3 A. Josh Hays.  
 4 Q. When you say you reached out several  
 5 times, you mean before the spring of 2004?  
 6 A. Before that meeting I had tried to get  
 7 ahold of Frank. And those conversations didn't  
 8 happen. And I turned it over to Josh. And Josh is  
 9 the one who initially made contact formally.  
 10 Q. Over what period of time are we talking  
 11 about?  
 12 A. It was less than a week.  
 13 Q. You're not saying that you had meetings  
 14 with him in the prior year or anything?  
 15 A. No.  
 16 Q. So can you tell me what you and Mr.  
 17 Marzano discussed at that first meeting in  
 18 Philadelphia?  
 19 A. The opportunity at Multi, how we  
 20 operate, what resources/tools he would have  
 21 available if he were to consider joining us.  
 22 Q. Did you make him an offer?  
 23 A. I think we agreed to continue to have a  
 24 discussion at that time.  
 25 Q. Did you have any information about Mr.

42 (Pages 380 to 383)

Page 384

1 Kundracik - direct  
 2 Marzano at that time?  
 3 A. I think the decision that we made then  
 4 was there were three pieces that had to be  
 5 addressed. We always involve Compliance and Legal.  
 6 And then my function is the sales piece of it.  
 7 What's available. And then after that you have  
 8 discussions about what we can do to facilitate the  
 9 transfer. So the next decision was the gathering of  
 10 those teams and having individual conversations.  
 11 Q. Tell me what transpired following your  
 12 meeting in Philadelphia.  
 13 A. Went back to Denver. We were, I think,  
 14 genuinely excited about Frank from the standpoint of  
 15 his business model. And we were looking forward to  
 16 further discussions with him about affiliating.  
 17 Q. Can you recollect when the meeting in  
 18 Philadelphia actually took place?  
 19 A. Yes. I believe it was April. I  
 20 couldn't give you the exact date. It was our April  
 21 regional meeting. Or it possibly could have been  
 22 the first week in May. But it was in the late  
 23 spring of 2004.  
 24 Q. Do you recollect, as you sit here  
 25 today, when Frank actually affiliated with

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1 Kundracik - direct  
 2 what we focused on is this was imminent. I can't  
 3 recall whether it had happened at that point. But  
 4 we needed to do further due diligence on our end,  
 5 you know, to make sure we were in a situation to  
 6 accommodate Frank.  
 7 Q. Did you on your end get information  
 8 about Frank's affiliation with American Express and  
 9 his history in the securities business in general?  
 10 A. Yes. I mean it's part of the process  
 11 of what we do when we talk to anyone.  
 12 Q. Tell the panel what you got and when  
 13 you believe you got it if you could remember?  
 14 A. Our process is we get an authorization  
 15 to check credit and check their U-5 or U-4. That  
 16 request goes in from the compliance side of the  
 17 business. And Compliance takes it from there. And  
 18 then they report back to us what their  
 19 recommendation is, whether moving forward or stop.  
 20 Q. What was the report back?  
 21 A. The recommendation from the Compliance  
 22 and the Legal teams were to go ahead and proceed.  
 23 We needed some additional information or they needed  
 24 some additional information at that point.  
 25 Q. They needed additional information from

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1 Kundracik - direct  
 2 MultiFinancial?  
 3 A. I couldn't give you the exact date.  
 4 Within 30 days of that meeting.  
 5 Q. So what's the next event that you were  
 6 involved in that you recollect?  
 7 A. Trying to think. From the standpoint  
 8 of once Frank joined us?  
 9 Q. No. Before Frank joined you.  
 10 A. Oh, our process at Multi, any time we  
 11 talk to a rep. Three prongs. We got together and  
 12 had a meeting and discussed what's the next step  
 13 from a standpoint of our ability to help, if Frank  
 14 chooses to join us, in facilitating that transfer.  
 15 Q. Did you get information from Frank?  
 16 A. The information that we got from Frank  
 17 at that meeting was really focused around his  
 18 business mix. Because each person's business create  
 19 unique opportunities and challenges for us to  
 20 transition somebody. So that's where my focus was  
 21 at that time.  
 22 Q. Did you learn about the circumstances  
 23 under which Mr. Marzano had separated from American  
 24 Express?  
 25 A. You know, not all the details. Now,

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1 Kundracik - direct  
 2 whom?  
 3 A. From Frank, I believe. You know,  
 4 usually if there's any issues. That's the first  
 5 step, is to have a conversation.  
 6 Q. About what?  
 7 A. There was some issue that related to  
 8 the nature, you know, of Frank's leaving American  
 9 Express.  
 10 Q. What do you mean by "the nature?"  
 11 A. What was filed apparently after he left  
 12 or at the time of his departure.  
 13 Q. What was the issue as best you can  
 14 recall?  
 15 MR. ZARETSKY: Objection, Mr.  
 16 Chairman. Just a foundation.  
 17 THE CHAIRMAN: Let him answer the  
 18 question. You can answer the question.  
 19 A. My understanding, again, you know,  
 20 there were as it came back to me, I couldn't even  
 21 really give you the exact reason. So I'd rather not  
 22 comment on it at this point.  
 23 Q. Did you see a copy of the CRD report or  
 24 of Frank's U-5?  
 25 A. I did not.

43 (Pages 384 to 387)



Page 388

1 Kundracik - direct  
 2 Q. Have you ever seen it?  
 3 A. I have not.  
 4 Q. That's one document you don't have to  
 5 look at.  
 6 Did there come a point, well, tell me  
 7 whether or not you had discussions with Frank about  
 8 the compensation package or the transition package  
 9 that might be available to him were he to affiliate  
 10 with MultiFinancial?  
 11 A. Okay. You know, typically the process  
 12 that I'm involved in is discussing various options  
 13 on the transition side. What we can/can't do now.  
 14 Today everybody's limited a little bit by resources.  
 15 But my focus was based on his block of business.  
 16 There were certain tools of certain things that we  
 17 could do for Frank after he did the things he needed  
 18 to do to put him in a position to transition to us.  
 19 Q. You told him what those things that you  
 20 could offer to him were?  
 21 A. Yes.  
 22 Q. Tell the panel what they were.  
 23 A. At that stage in the conversation, you  
 24 know, our focus was trying to figure out if we had  
 25 the internal resources or if Frank needed to have

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1 Kundracik - direct  
 2 temps or temporary assets there. Discussions around  
 3 who and how we might be able to help defray some of  
 4 those costs.  
 5 As you can imagine, when you change  
 6 broker-dealers or make a switch, there's volumes of  
 7 paperwork that need to be processed. And, you know,  
 8 there's mail costs. Things like that associated  
 9 with it. So we discussed those issues. And taking  
 10 care of E&O, possibly. You know, and possibly the  
 11 registration fees. The typical things that somebody  
 12 incurs when they transition.  
 13 Q. Was MultiFinancial in a position to  
 14 offer a signing bonus at that time?  
 15 A. At that point in time, really from the  
 16 time I got there, we weren't doing and actively  
 17 seeking signing bonus arrangements.  
 18 Q. That's not what I asked you.  
 19 Was a bonus arrangement available to  
 20 somebody who could negotiate it and qualify for it  
 21 at that time?  
 22 A. We discussed --  
 23 MR. ZARETSKY: Objection, Mr.  
 24 Chairman. I think Mr. Kundracik just  
 25 answered that question.

Page 390

1 Kundracik - direct  
 2 MR. CAMPBELL: He said he wasn't  
 3 actively doing it. I didn't ask him if he  
 4 was actively doing it. I asked him what was  
 5 available. And I think he's about to tell  
 6 under the circumstances what he discussed.  
 7 THE CHAIRMAN: You can answer the  
 8 question, Mr. Kundracik.  
 9 A. We always listen to proposals from our  
 10 advisors on what might be available in addition to  
 11 what we traditionally do.  
 12 Q. What was available?  
 13 A. At that time?  
 14 Q. At that time. Right.  
 15 A. At that point we had not. What you  
 16 typically would do would be forgivable loans, et  
 17 cetera. And we had not done one of those since I  
 18 was there at that point in 2004.  
 19 Q. Didn't you discuss with Frank 10  
 20 percent of GDC front money?  
 21 A. In terms of a total transition package  
 22 that is, it was accountable, you know, those were  
 23 our guidelines at that time. It wasn't structured  
 24 as a forgivable transaction like you see pretty  
 25 regularly today. You know, just by the time you add

Page 391

1 Kundracik - direct  
 2 up all the components, it could be that much.  
 3 Q. Thank you.  
 4 What package did MultiFinancial  
 5 eventually agree with Mr. Marzano?  
 6 MR. ZARETSKY: Objection, again.  
 7 Mr. Chairman, if he has a  
 8 foundation, the witness has a foundation for  
 9 knowing what that was.  
 10 THE CHAIRMAN: Ask a few  
 11 preliminary questions, Mr. Campbell.  
 12 Q. Do you have that knowledge?  
 13 A. Yes.  
 14 Q. Did you negotiate that package?  
 15 A. Not by myself. But most them all.  
 16 MR. CAMPBELL: That was a good  
 17 enough foundation, Mr. Chairman.  
 18 MR. ZARETSKY: I don't think Mr.  
 19 Campbell yet has been made the arbiter of  
 20 these things.  
 21 THE CHAIRMAN: Ask the question.  
 22 MR. CAMPBELL: Do I have to call  
 23 all five people in here?  
 24 THE CHAIRMAN: Mr. Campbell.  
 25 Q. The question was what was the package

44 (Pages 388 to 391)

Page 392

1 Kundracik - direct  
2 that Mr. Marzano finally got?  
3 A. As we discussed in the first serious  
4 meeting, it was expenses for airborne or  
5 overnighting, you know, paperwork that were  
6 particular to the transfer once the proper  
7 arrangements were done. Support in some client  
8 meetings after the transfer occurred. E&O.  
9 Registration fees. And that was pretty much it.  
10 Q. No signing bonus?  
11 A. No signing bonus.  
12 Q. No other transition compensation  
13 payments?  
14 A. No. I mean, it was limited to  
15 verifiable expenses associated with those efforts on  
16 his part.  
17 Q. Any enhanced payout?  
18 A. No. Payout commensurate with his  
19 verified gross production.  
20 Q. On the grid?  
21 A. On the grid.  
22 Q. Nothing in excess of the grid?  
23 A. No.  
24 Q. Now, is it true to say that your job is  
25 primarily recruiting?

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1 Kundracik - direct  
2 A. It's probably 25 percent of what I'm  
3 responsible for.  
4 Q. Any other aspects? What are the other  
5 aspects of your job?  
6 A. Strategic sponsor relationships,  
7 enterprise relationships, conferences, meetings,  
8 anything that is really associated with how we can  
9 facilitate a rep's business enhancement that join  
10 us.  
11 MR. CAMPBELL: Stop for a second.  
12 THE CHAIRMAN: Continue, please.  
13 Q. So you're there to help the producers  
14 produce as well as to recruit?  
15 A. Yes.  
16 Q. As part of the recruitment of Mr.  
17 Marzano, did you or did you ask someone on your  
18 behalf to get information from American Express with  
19 regard to the disclosures on Frank's U-5?  
20 MR. ZARETSKY: Objection, Mr.  
21 Chairman. Mr. Kundracik has testified that  
22 he's never seen the U-5.  
23 MR. CAMPBELL: I didn't ask him,  
24 okay. Mr. Chairman, if that's his objection,  
25 that's his objection.

Page 394

1 Kundracik - direct  
2 THE CHAIRMAN: Could you rephrase  
3 the question.  
4 Q. Let me repeat the question so everybody  
5 knows what it is.  
6 When you say the U-5 or not, or did he  
7 ask someone at MultiFinancial on his behalf to get  
8 additional information from American Express with  
9 respect to any information reported on the U-5?  
10 A. I did not.  
11 Q. Do you know if MultiFinancial did make  
12 an effort to gain additional information from  
13 American Express about any information reported on  
14 the U-5?  
15 A. We have a standard process that  
16 Compliance/Legal handles that piece. I handle mine.  
17 Q. You're involved?  
18 A. I'm uninvolved.  
19 MR. ZARETSKY: You are involved  
20 or not involved?  
21 THE WITNESS: Uninvolved in that  
22 process.  
23 MR. CAMPBELL: One second, Mr.  
24 Chairman.  
25 Q. Who made the final decision that it was

Page 395

1 Kundracik - direct  
2 okay to affiliate Mr. Marzano with MultiFinancial?  
3 A. Our rep review team.  
4 Q. And who's on the rep review team?  
5 A. Compliance, myself, and the president  
6 and CEO of Multi.  
7 Q. Is Mr. Ressler on that list?  
8 A. Yes.  
9 MR. CAMPBELL: No further  
10 questions, Mr. Chairman.  
11 THE CHAIRMAN: Thank you.  
12 Mr. Zaretsky, do you need a few  
13 moments?  
14 MR. ZARETSKY: Just a moment.  
15 MR. CAMPBELL: For the record, 16  
16 minutes.  
17 CROSS-EXAMINATION  
18 BY MR. ZARETSKY:  
19 Q. Mr. Kundracik, just so I understand,  
20 you were involved in the negotiation of the ultimate  
21 package that was provided or offered to Mr. Marzano?  
22 A. I had input.  
23 Q. Am I correct in understanding this was  
24 a standard set of terms that you provided to new  
25 recruits who had experience in the business

45 (Pages 392 to 395)

Page 396

1 Kundracik - cross  
2 obviously?  
3 A. Yes. More or less.  
4 Q. And you say at the time that  
5 MultiFinancial was not doing signing bonuses,  
6 correct?  
7 A. Correct.  
8 Q. Not doing forgivable loans, correct?  
9 A. Correct.  
10 Q. When I say not doing them, that was the  
11 standard practice, was to not do that, at the time,  
12 correct?  
13 A. It was an issue of funding.  
14 Q. Regardless of the reasons?  
15 A. Correct.  
16 Q. I understand that. And I appreciate  
17 you're telling us that.  
18 But, in fact, the result was signing  
19 bonuses, forgivable loans. Those types of things  
20 were not being given?  
21 A. Correct.  
22 Q. And you say it was a funding issue?  
23 A. Correct.  
24 Q. And just so I have clarification, there  
25 was some testimony here. Mr. Campbell asked you

Page 397

1 Kundracik - cross  
2 about a 10 percent transition package or something?  
3 A. Hmm-hmm.  
4 Q. Was that offered to Mr. Marzano?  
5 A. What we offered was what we came with  
6 accountable expenses associated with those specific  
7 items.  
8 Q. Did you ever tell Mr. Marzano that  
9 there was a 10 percent transition package available?  
10 A. We during negotiations or discussions  
11 rather discussed that that would be our cap.  
12 Q. I see.  
13 So, in other words, it's this expense,  
14 these expenses that you'll provide, but the cap is  
15 10 percent of GDC?  
16 A. Yes.  
17 Q. Not that you just get 10 percent if the  
18 expenses don't meet that?  
19 A. Yes.  
20 MR. ZARETSKY: No further  
21 questions. Thank you.  
22 THE CHAIRMAN: Thank you. Mr.  
23 Campbell, any follow-up?  
24 REDIRECT EXAMINATION  
25 BY MR. CAMPBELL:

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1 Kundracik - redirect  
2 Q. Frank asked for a bonus, didn't he, for  
3 a signing bonus?  
4 A. In discussions with me, I honestly  
5 can't recall whether he and I talked about it  
6 specifically.  
7 MR. CAMPBELL: Okay. No further  
8 questions, Mr. Chairman.  
9 ARBITRATOR COHEN: Mr. Kundracik,  
10 you are still in the same position you were  
11 in at the time you hired Mr. Marzano?  
12 THE WITNESS: Yes.  
13 ARBITRATOR COHEN: That was  
14 approximately a year-plus ago?  
15 THE WITNESS: Eighteen months.  
16 ARBITRATOR COHEN: Eighteen  
17 months ago.  
18 Mr. Marzano's production, where  
19 does he stand relative to the rest of your  
20 reps, or shall I ask you how many reps you  
21 have and then ask you the question?  
22 THE WITNESS: We have just shy of  
23 a thousand producing reps.  
24 ARBITRATOR COHEN: Presently he  
25 stands where?

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1 Kundracik - redirect  
2 THE WITNESS: Frank is in the top  
3 five.  
4 ARBITRATOR COHEN: Thank you.  
5 MR. CAMPBELL: Want to  
6 renegotiate that deal now?  
7 MR. ZARETSKY: I think I passed  
8 the witness.  
9 THE CHAIRMAN: Thank you, Mr.  
10 Kundracik.  
11 (Witness excused.)  
12 THE CHAIRMAN: Mr. Campbell. Any  
13 other order of business here today?  
14 MR. CAMPBELL: Mr. Nicolosi will  
15 be our next witness.  
16 Mr. Chairman, whether it's this  
17 afternoon or some other day.  
18 THE CHAIRMAN: Is Nicolosi  
19 outside?  
20 MR. ZARETSKY: Yes.  
21 (Short recess.)  
22 THE CHAIRMAN: Mr. Campbell, you  
23 ready to proceed?  
24 MR. CAMPBELL: Yes.  
25 THE CHAIRMAN: Call your next

46 (Pages 396 to 399)



Page 400

1  
2 witness, please.  
3 MR. CAMPBELL: Mr. Marzano calls  
4 Mr. Nicolosi.  
5 THOMAS NICOLOSI, called as a  
6 witness on behalf of the Respondent, being  
7 first duly sworn, testified as follows:  
8 THE CHAIRMAN: Mr. Nicolosi,  
9 could you give your first and last name,  
10 spell it please for the reporter and business  
11 address?  
12 THE WITNESS: Thomas Nicolosi.  
13 T-h-o-m-a-s N-i-c-o-l-o-s-i. 500 Mamaroneck  
14 Avenue, Harrison, New York 10528.  
15 THE CHAIRMAN: You may proceed,  
16 Mr. Campbell.  
17 MR. CAMPBELL: Thank you, Mr.  
18 Chairman.  
19 DIRECT EXAMINATION  
20 BY MR. CAMPBELL:  
21 Q. Mr. Nicolosi, can you please state your  
22 current business affiliation and address?  
23 A. I'm with Ameriprise Financial Services  
24 at 500 Mamaroneck Avenue, Harrison, New York.  
25 Q. What is your current position with a

Page 402

1 Nicolosi - direct  
2 Q. So he was a P-2 advisor?  
3 A. Everything's a P-2 advisor.  
4 Q. Did you recruit Mr. Marzano?  
5 A. I was involved in recruiting him. Yes.  
6 Q. In fact, isn't part of your job at  
7 Ameriprise Financial, I'll just use the new name  
8 from now on, if I occasionally slip into AEFA,  
9 please understand it's just so new, part of your job  
10 is recruitment; isn't it?  
11 A. Yes, it is.  
12 Q. Recruiting for both the employee  
13 platform and the franchisee platform?  
14 A. That is correct.  
15 Q. When you say you run the market group,  
16 explain to the panel, please, since it's a slightly  
17 different organization to retail brokerage, not  
18 necessarily warehouse retail brokerage, what  
19 comprises your market group and how is it organized?  
20 A. I have approximately 400 advisors  
21 between the two platforms. I work through six field  
22 vice presidents. One of my field vice presidents is  
23 responsible for the P-2 platform, the franchisee  
24 platform. And five of my field vice presidents are  
25 responsible for the employee platform.

Page 401

1 Nicolosi - direct  
2 Ameriprise Financial Services?  
3 A. I am a group vice president.  
4 Q. And Ameriprise Financial Services is  
5 the successor firm to American Express Financial  
6 Advisors?  
7 A. Yes, it is.  
8 Q. Same company, just change of name; is  
9 that right?  
10 A. It's changing a name. And they are  
11 spinning off to an independent company.  
12 Q. Has that happened yet? Has the  
13 spin-off occurred yet?  
14 A. No.  
15 Q. Can you please tell the panel what your  
16 functions are as the group vice president?  
17 A. As the group vice president I am  
18 responsible for running what we call a market group  
19 which has P-1 independent, P-1 employee advisors and  
20 P-2 independent advisors.  
21 Q. P-2 advisors, are those who are  
22 franchisees?  
23 A. That is correct.  
24 Q. Like Mr. Marzano was a franchisee?  
25 A. Yes, he was.

Page 403

1 Nicolosi - direct  
2 Q. Am I right in thinking that Mr.  
3 Masciolo at the time Mr. Marzano was hired was the  
4 FVP who was responsible for the P-2 advisors?  
5 A. Yes.  
6 Q. Is he still in that job today, by the  
7 way?  
8 A. Yes.  
9 Q. How many officers are in your market  
10 group?  
11 A. Approximately, 15 or more.  
12 Q. Fifteen plus?  
13 A. Hmm-hmm.  
14 Q. Give or take one or two; is that what  
15 you mean?  
16 A. I don't know the exact number. But  
17 it's north of 15.  
18 Q. You said you had 400 advisors. How  
19 many of them are franchisees?  
20 A. Approximately, 265.  
21 Q. Has that number changed appreciably  
22 from when the time Mr. Marzano separated from  
23 American Express?  
24 A. It's probably 280, in that  
25 neighborhood.

47 (Pages 400 to 403)

Page 404

1 Nicolosi - direct  
2 Q. Have you affiliated any new franchisees  
3 since Mr. Marzano left?  
4 A. Yes.  
5 Q. So you've lost some, but you've also  
6 added some?  
7 A. Yes.  
8 Q. Are you aware of the American Express  
9 franchise agreement and its various addenda?  
10 A. I'm aware there is a franchise  
11 agreement.  
12 Q. Well, that's 265 of your producers are  
13 producers pursuant to such a franchise agreement,  
14 right?  
15 A. That is correct.  
16 Q. Would you agree with me that all of the  
17 top producers or on pursuant to the franchise  
18 agreement?  
19 A. Say that again, please.  
20 Q. All of the top producers in your market  
21 group are franchisees?  
22 A. How do you define a top producer?  
23 Q. Everybody who's a franchisee is a  
24 better producer than anybody who's an employee; is  
25 that a good analogy?

Page 405

1 Nicolosi - direct  
2 A. That is not correct.  
3 Q. That was a wild one.  
4 Your top hundred producers, all  
5 franchisees?  
6 A. You want an exact answer. I can't give  
7 you an exact answer.  
8 Q. Are you telling us that you don't  
9 really know much about the franchise agreement?  
10 A. I know it exists. I'm telling you that  
11 if you want me to quote it, I cannot do it.  
12 Q. Have you ever seen it?  
13 A. I have.  
14 Q. Did you, for example, see the franchise  
15 agreement that Mr. Marzano signed?  
16 A. Don't know if I saw his particular  
17 franchise agreement.  
18 Q. In fact, all the franchise agreements  
19 are the same; aren't they?  
20 A. To my understanding, yes.  
21 Q. Yes.  
22 If you saw one, you've seen them all,  
23 right?  
24 A. I don't believe I saw Frank's.  
25 Q. I didn't ask you that.

Page 406

1 Nicolosi - direct  
2 I asked if you've seen one you've seen  
3 them all. Because they're all identical except for  
4 the signatures?  
5 A. They're the same.  
6 Q. Yes  
7 Some people have addenda/addendums, if  
8 you want to put it that way, to their franchise  
9 agreements; don't they?  
10 A. Not to my knowledge.  
11 Q. Never heard of an addendum to a  
12 franchise agreement?  
13 A. No.  
14 Q. Never heard of addendum 3-R?  
15 A. No.  
16 Q. Never heard of addendum 3-V?  
17 A. No.  
18 Q. Are you sure you run a market group at  
19 Ameriprise Financial Services?  
20 MR. ZARETSKY: Objection, Mr.  
21 Chairman.  
22 THE CHAIRMAN: Sustained.  
23 Q. Let me show you a couple of documents.  
24 See if it is something that you might have  
25 recognized that you might recognize. And I hope I

Page 407

1 Nicolosi - direct  
2 have them.  
3 When was the last time you saw a  
4 franchise agreement?  
5 A. Don't know. I don't know.  
6 Q. A wild guess. Is it in the last six  
7 months?  
8 A. No.  
9 Q. A year ago?  
10 A. Don't recall.  
11 Q. When was the last time you affiliated a  
12 new franchisee?  
13 A. The past couple of months.  
14 Q. And you didn't see any franchise  
15 agreement in connection with that new franchisee  
16 getting him to sign it?  
17 A. No.  
18 Q. And talking to them about it?  
19 A. I'm not required to.  
20 Q. A franchise agreement is part of a  
21 uniform franchise offering circular; isn't it?  
22 A. I believe so.  
23 Q. So one book, all bound together with  
24 spiral binding?  
25 A. Yes.

48 (Pages 404 to 407)

Page 408

1 Nicolosi - direct  
2 Q. Everything is together in one package?  
3 A. Yes.  
4 Q. Let me show you a document and see if  
5 it refreshes your recollection about anything. It's  
6 a document entitled, Addendum 3-R (Rollout)  
7 Restrictive Covenant Addendum. And it has a date at  
8 the bottom 10/25/1999.  
9 Can you take a look at that?  
10 MR. ZARETSKY: Let the witness  
11 take a look at it.  
12 MR. CAMPBELL: I was going to ask  
13 him a question while he was looking at it.  
14 But let him look at it.  
15 THE CHAIRMAN: There's no  
16 question. Let us know when you're finished  
17 looking at it, Mr. Nicolosi.  
18 THE WITNESS: Okay.  
19 THE CHAIRMAN: He's ready, Mr.  
20 Campbell.  
21 Q. In 1999, specifically on 10/25/1999,  
22 were you a group vice president?  
23 A. Yes.  
24 Q. In the same market group?  
25 A. Yes.

Page 409

1 Nicolosi - direct  
2 Q. So you were here when the franchise  
3 agreement was rolled out; weren't you?  
4 A. Yes.  
5 Q. And it was rolled out over a period of  
6 time in the fall of 1999 into the spring of 2000,  
7 right?  
8 A. I actually don't recall.  
9 Q. Can we just try to refresh your  
10 recollection.  
11 Nobody at American Express was a  
12 franchisee before the franchise agreement, right?  
13 A. That is correct.  
14 Q. The entire company was set up on an  
15 entirely different set of contracts; isn't that  
16 right?  
17 MR. ZARETSKY: Objection to the  
18 form, Mr. Chairman. Mr. Nicolosi is not an  
19 attorney.  
20 MR. CAMPBELL: It's not a legal  
21 question. The man is a group vice president.  
22 MR. ZARETSKY: He's asking him if  
23 it was an entirely different set of contracts  
24 it would require.  
25 MR. CAMPBELL: Totally separate.

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1 Nicolosi - direct  
2 THE CHAIRMAN: Do you know if  
3 there was a different document than the one  
4 before you being used.  
5 Q. Than the franchise agreement?  
6 A. There was a different document.  
7 Q. And the company decided, a sea change  
8 on a certain date, everybody's going to cancel all  
9 the other contracts and everybody becomes either a  
10 P-1 employee advisor or a becomes a franchisee.  
11 Do you remember that?  
12 MR. ZARETSKY: Mr. Chairman, I  
13 don't want to prolong this, but he's asking  
14 about a time period before Mr. Marzano had  
15 any affiliation with American Express. This  
16 is a lot of stuff that I don't know how it  
17 has any relevance whatsoever to Mr. Marzano's  
18 claims.  
19 MR. CAMPBELL: Mr. Chairman, I'm  
20 trying to refresh the witness' recollection  
21 about the foundation document for the  
22 relationship between his company of which --  
23 THE CHAIRMAN: Can you phrase  
24 your question --  
25 MR. CAMPBELL: -- 265 of his.

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1 Nicolosi - direct  
2 THE CHAIRMAN: -- Mr. Campbell to  
3 encompass only the period of time only when  
4 Mr. Nicolosi worked for AEFA.  
5 MR. CAMPBELL: Mr. Nicolosi was  
6 the GVP at the time this happened.  
7 THE CHAIRMAN: I thought that's  
8 what the question referred to.  
9 MR. CAMPBELL: It does.  
10 MR. ZARETSKY: He's asked him.  
11 Mr. Nicolosi was an employee and a GVP at  
12 American Express before Mr. Marzano ever  
13 joined the company. He's asking him about  
14 the rolling out of a contract in 1999 which  
15 is eight, nine months before even Mr. Marzano  
16 became affiliated with the company.  
17 My objection is I don't see what  
18 the relevance is.  
19 MR. CAMPBELL: It started in  
20 1999. It wasn't signed until 2000.  
21 THE CHAIRMAN: Mr. Campbell, go  
22 ahead.  
23 Q. I'm trying to refresh your  
24 recollection, Mr. Nicolosi.  
25 In the period at the end of 1999

49 (Pages 408 to 411)



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1 Nicolosi - direct  
2 beginning of 2000, franchise agreement was being  
3 rolled out companywide; wasn't it?  
4 A. Yes.  
5 Q. It was a huge deal, wasn't it?  
6 MR. ZARETSKY: Object to the  
7 form.  
8 Q. It was a huge deal. You know it was.  
9 Didn't you have dozens of meetings  
10 about it, Mr. Nicolosi?  
11 THE CHAIRMAN: Mr. Campbell.  
12 MR. ZARETSKY: Object.  
13 THE CHAIRMAN: Mr. Campbell.  
14 MR. CAMPBELL: Mr. Chairman.  
15 THE CHAIRMAN: Start with  
16 something preliminary. You don't need to be  
17 argumentative at this point.  
18 MR. CAMPBELL: Mr. Chairman, I am  
19 amazed that this man who's been a group vice  
20 president for years, including at the time  
21 when the biggest change this company had gone  
22 through in a hundred years took place, that  
23 he claims to have no knowledge whatsoever  
24 about the key foundation document pursuant to  
25 which most of his market group operates.

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1 Nicolosi - direct  
2 And as a result, I'm trying,  
3 albeit maybe a little aggressively, and I'll  
4 tone that down a bit, to refresh his  
5 recollection so that maybe we can get a  
6 glimmer that maybe this guy who was a GVP in  
7 one of the biggest market groups in the  
8 country, actually paid attention to his  
9 business.  
10 MR. ZARETSKY: Mr. Chairman, I  
11 need to jump in. I'm sorry. And I see from  
12 the Chairman, I don't want to interrupt you,  
13 but, perhaps Mr. Campbell's threshold for  
14 amazement is low. I don't know really where  
15 it is on that scale. But he's now making  
16 statements that Mr. Nicolosi never testified  
17 to.  
18 THE CHAIRMAN: Thank you.  
19 MR. ZARETSKY: He asked a  
20 question: Is it a huge deal. That's not a  
21 proper question.  
22 THE CHAIRMAN: Mr. Campbell, Mr.  
23 Campbell.  
24 MR. CAMPBELL: Yes, Mr. Chairman.  
25 THE CHAIRMAN: The Chair has

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1 Nicolosi - direct  
2 given you the opportunity to question this  
3 witness about a document in existence prior  
4 to the one that's going to be at issue in  
5 this arbitration. Could you please --  
6 MR. CAMPBELL: Same one, Mr.  
7 Chairman, same one.  
8 THE CHAIRMAN: -- ask the  
9 questions in a less aggressive fashion so we  
10 can get these preliminary matters out of the  
11 way.  
12 MR. CAMPBELL: Just so you  
13 understand, Mr. Chairman, he testified that  
14 all the franchise agreements are the same.  
15 Frank Marzano signed exactly the same  
16 franchise agreement. This is just a part of  
17 the package which he also testified is one  
18 package. Everything is together in one set.  
19 Same package that Frank Marzano signed. But  
20 this is a different part of the package to  
21 the one that's actually in issue here. But  
22 it's related to the issues.  
23 MR. ZARETSKY: You just keep  
24 saying what Mr. Nicolosi testified to. The  
25 record's going to say that. And he's

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1 Nicolosi - direct  
2 mischaracterizing it. Let him ask the  
3 question which I know the panel, the Chairman  
4 has directed him to do.  
5 MR. CAMPBELL: The record will  
6 reflect that he testified there's one  
7 franchise agreement. It's in one package,  
8 all bound together. That's not a  
9 mischaracterization.  
10 THE CHAIRMAN: Mr. Campbell.  
11 ARBITRATOR COHEN: Continue, Mr.  
12 Campbell, please.  
13 MR. CAMPBELL: Yes, Mr. Cohen.  
14 Q. Mr. Nicolosi, would you agree that the  
15 franchise agreement that Frank Marzano signed would  
16 be the same franchise agreement that everyone else  
17 signed?  
18 A. Yes.  
19 Q. And it was in the same package, all  
20 bound together with a uniform franchise offering  
21 circular?  
22 A. I would assume so.  
23 Q. Tell me, as best you can recall, what's  
24 in that package of papers that is part of what Mr.  
25 Marzano signed?

50 (Pages 412 to 415)

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1 Nicolosi - direct  
2 MR. ZARETSKY: Mr. Chairman, if  
3 he's got a document, show it to him. What's  
4 the relevance of having Mr. Nicolosi say  
5 what's in an offering circular?  
6 MR. CAMPBELL: Well, he doesn't  
7 have to. He just has to say it contains an  
8 offering circular.  
9 Q. Does it contain an offering circular?  
10 MR. ZARETSKY: He's already  
11 answered the question.  
12 THE CHAIRMAN: Mr. Nicolosi, can  
13 you answer that question?  
14 THE WITNESS: Yes.  
15 Q. Does it contain a franchise agreement?  
16 A. Yes.  
17 Q. Does it contain addendums to the  
18 franchise agreement?  
19 A. Apparently it does.  
20 Q. Well, you've been working with this  
21 agreement for years. You've got 265 people who have  
22 signed it. Marzano signed it. Every time you  
23 recruit somebody --  
24 ARBITRATOR COHEN: Mr. Campbell,  
25 if I may interrupt, Mr. Nicolosi is not on

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1 Nicolosi - direct  
2 trial. He is a witness. He is trying to  
3 answer your questions. Please give him the  
4 benefit of the doubt. I understand your  
5 frustration. But it's not helping this case  
6 at all.  
7 MR. CAMPBELL: It's not my job to  
8 give him the benefit of the doubt, Mr. Cohen.  
9 You may do that. My job is to challenge the  
10 bounds. And I will try to keep it in the  
11 bounds that the panel expects.  
12 Q. Have you heard of an addendum pursuant  
13 to which advisors are permitted to leave American  
14 Express if they have six years or more seniority  
15 with the firm, and to retain copies of their client  
16 documents, assuming they meet the criteria of the  
17 addendum?  
18 A. I'm familiar with the six years. I'm  
19 not familiar with the copies.  
20 Q. The six years meanings after, if  
21 they've been here more than six years, they can  
22 leave. And there's a certain addendum that  
23 addresses that?  
24 A. I don't know what you call it. But I  
25 know after six years they can leave.

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1 Nicolosi - direct  
2 Q. Let me direct your attention to a piece  
3 of Addendum 3-R.  
4 MR. CAMPBELL: Mr. Chairman, I  
5 just brought the pieces. I have the entire  
6 franchise agreement. I only have one copy.  
7 It's about an inch and a half thick. To cut  
8 down on giving you 800 pages you don't need,  
9 I didn't bring it all. But if you insist  
10 that I bring it, I'll bring it. It is  
11 available.  
12 Q. If you can look at the document that  
13 I've asked you to address Addendum 3-R. See part C  
14 there?  
15 A. Hmm-hmm.  
16 Q. "Terms of forbearance agreement."  
17 A. Yes.  
18 MR. ZARETSKY: Just for the  
19 record, you're referring to the first page of  
20 the document which has got a page No. 41 at  
21 the bottom.  
22 THE CHAIRMAN: Yes.  
23 Would someone choose to give the  
24 panel something to look at too.  
25 MR. ZARETSKY: Has it been marked

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1 Nicolosi - direct  
2 as an exhibit?  
3 MR. CAMPBELL: It hasn't. Maybe  
4 we'll mark it for identification, Mr.  
5 Chairman.  
6 THE CHAIRMAN: You're referring  
7 to in talking about it --  
8 MR. GOOD: Let me give you my  
9 copy.  
10 MR. CAMPBELL: I have copies for  
11 everybody.  
12 THE CHAIRMAN: Mr. Good, here's  
13 your copy back. We have copies for  
14 everybody.  
15 Perhaps you can mark one, Mr.  
16 Levine.  
17 (Excerpt from Addendum 3-R marked  
18 Respondent's Exhibit 6 in evidence as of this  
19 date.)  
20 Q. On the first page of what we marked as  
21 Respondent's No. 6 for identification, paragraph C,  
22 terms of forbearance agreement:  
23 "As a mitigation of this irreparable  
24 harm, AEFA agrees to forbear from enforcement  
25 of its right against advisor under the

51 (Pages 416 to 419)

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1 Nicolosi - direct  
2 restrictive covenant, if advisor timely and  
3 fully complies with the following  
4 conditions."  
5 You see that?  
6 A. Hmm-hmm.  
7 THE CHAIRMAN: You have to answer  
8 yes or no for the record.  
9 A. Yes.  
10 Q. And if you look at number 2(a) under  
11 paragraph C, length of service, "have served at  
12 least six consecutive years."  
13 Do you see that?  
14 A. Yes.  
15 Q. Having reviewed the exhibit and the  
16 items that I've directed your attention to, does  
17 this refresh your recollection that this is the  
18 addendum that addresses the outside the six-year  
19 provision that you were describing earlier?  
20 A. This appears to be a copy of that.  
21 Yes.  
22 Q. Now, if I can have you turn to the  
23 second page, No. 42 at the bottom from the section  
24 numbered 3.  
25 A. Hmm-hmm.

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1 Nicolosi - direct  
2 Q. Second paragraph:  
3 "To the extent consistent with privacy  
4 laws and policies in order to allow advisors  
5 to serving portable products and to fulfill  
6 compliance duties, advisor may retain copies  
7 of..."  
8 Then it goes on to list statements,  
9 plans, and so on.  
10 Do you see that?  
11 A. Yes.  
12 Q. Mr. Nicolosi, the people in your market  
13 group who meet the criteria and who have separated  
14 from American Express with more than six years of  
15 service, consistent with whatever policy was in  
16 place with respect to privacy, have left your market  
17 group and retained copies of documents identified in  
18 section 3; isn't that right?  
19 A. Ask me that again.  
20 Q. Franchisee advisors within your market  
21 group who meet the criteria set out in section C  
22 that we're looking at have, in fact, left American  
23 Express, and consistent with whatever privacy  
24 policies were in effect at the time, retained copies  
25 of the documents identified in second paragraph of

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1 Nicolosi - direct  
2 subsection 3, correct?  
3 A. I don't know that.  
4 Q. You don't know that?  
5 A. I don't know that.  
6 Q. So they may not have been. You're  
7 simply unaware; is that right?  
8 A. I'm not aware of that.  
9 Q. Are you aware whether or not American  
10 Express has lived up to its obligation to permit  
11 franchisees who qualify for Addendum 3-R to retain  
12 copies under the conditions imposed by Addendum 3-R?  
13 MR. ZARETSKY: Object to the form  
14 of the question. In the sense that he said  
15 "lived up to its obligation," he's  
16 characterizing what he believes the  
17 obligation to be. Mr. Campbell is. And I  
18 think there's no foundation for that  
19 question.  
20 MR. CAMPBELL: I'll withdraw it  
21 because I can see how it might be confusing.  
22 THE CHAIRMAN: Thank you.  
23 Q. Mr. Nicolosi, how many advisors have  
24 left in let's say since Mr. Marzano resigned in your  
25 market group, 40?

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1 Nicolosi - direct  
2 A. I couldn't give you an exact number.  
3 Q. Give me your best estimate. 30?  
4 A. I'd have to think it through.  
5 Q. Please think.  
6 A. Say, probably close to 30.  
7 Q. Did any of them have lengths of service  
8 more than six years?  
9 A. Yes.  
10 Q. In fact, close to all of them, correct?  
11 A. I don't know that.  
12 Q. Well, think about it.  
13 A. I wouldn't be able to. It would be  
14 total speculation.  
15 Q. Have you charged any of them with  
16 violation of Addendum 3-R?  
17 A. I don't know.  
18 Q. You're the GVP.  
19 Have you authorized any lawsuits to be  
20 filed or proceedings to be commenced in the NASD, or  
21 anything like that?  
22 A. Have I authorized anything?  
23 Q. Yes.  
24 A. No.  
25 Q. It's your market group. You're in

52 (Pages 420 to 423)



Page 424

1 Nicolosi - direct  
2 charge of such proceedings, other than Mr. Marzano.  
3 We won't talk about him.  
4 A. Again, anyone?  
5 Q. Has your market group been charged back  
6 for any such proceedings that have been commenced by  
7 American Express in the last year?  
8 A. What do you mean by that?  
9 Q. As an expense, charged back by home  
10 office for legal fees or other fees in connection  
11 with enforcement of Addendum 3-R?  
12 A. Not to my knowledge.  
13 Q. Do you sometimes recruit or attempt to  
14 recruit from the competition?  
15 A. Yes.  
16 Q. American Express has another addendum  
17 that applies to recruits from the competition;  
18 doesn't it?  
19 A. I'm not aware of that.  
20 Q. Well, let me try to refresh your  
21 recollection about that one.  
22 MR. CAMPBELL: To try to move  
23 things along, Mr. Chairman, I'll just have it  
24 marked for identification immediately.  
25 There's one for you, Mike.

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1 Nicolosi - direct  
2 I'm going to show the witness a  
3 document entitled, Addendum 3-V (veteran  
4 advisor recruits), also dated 10/25/1999. It  
5 has page 46 at the bottom. And runs through  
6 page 50.  
7 If there are no objections, Mr.  
8 Chairman, I have three copies for the panel.  
9 MR. ZARETSKY: Mr. Chairman, if I  
10 can just interject, and I gather Mr. Campbell  
11 wants to offer this in evidence, but these  
12 are blank documents. And we have very  
13 limited claims that are made by Mr. Marzano  
14 in this case.  
15 Why aren't we seeing the  
16 contract? I mean, if there's a signed  
17 contract, which we know there is, and if  
18 there are addenda that are signed or whatever  
19 they are, isn't that the issue? Why are we  
20 just dragging this out on frankly irrelevant  
21 questions in light of the fact that  
22 everybody's trying to get through this  
23 witness today, I know. It seems to me even  
24 more wasteful.  
25 But that's not the point. If

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1 Nicolosi - direct  
2 it's relevant, it's relevant. But I don't  
3 see the relevance of going into all these  
4 forms of documents just to have Mr. Nicolosi  
5 say, yes, that's a form of this and a form of  
6 that.  
7 (Series of blank form contracts  
8 marked Respondent's Exhibit 7 in evidence as  
9 of this date.)  
10 THE CHAIRMAN: Mr. Campbell, is  
11 there an equivalent document that's secured  
12 by your client as part of his employment with  
13 American Express Financial Advisors?  
14 MR. CAMPBELL: There is a  
15 different document. And we all know what  
16 those documents are since they've been  
17 presented in evidence at one time already.  
18 And they'll be presented again but through  
19 Mr. Marzano. Or maybe we will just  
20 incorporate them from the first set of  
21 exhibits rather than overburden the record  
22 with additional documents.  
23 These are relevant not to the  
24 specific document that Mr. Marzano signed  
25 because obviously he didn't sign these. He

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1 Nicolosi - direct  
2 wasn't a veteran advisor. He didn't have  
3 more than six years of service. But it goes  
4 to other aspects of his claim with respect to  
5 his files and what American Express' alleged  
6 policies and practices were with respect to  
7 copies of files. And this is the document,  
8 these are the documents that are part of the  
9 entire package, proportions of which Mr.  
10 Marzano did sign.  
11 THE CHAIRMAN: It's the same  
12 question, Mr. Campbell. The documents that  
13 Mr. Marzano signed should be the ones that  
14 are in issue; not ones that may have existed  
15 but were not signed by him.  
16 MR. CAMPBELL: It is an issue in  
17 this case and has been from the beginning  
18 whether or not American Express, and I  
19 believe it was a claim whether or not  
20 American Express ever allowed advisors to  
21 retain copies of documents. And whether or  
22 not American Express' privacy policies ever  
23 allowed advisors who are terminated to retain  
24 copies of their documents.  
25 We tried to put these documents

53 (Pages 424 to 427)

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1 Nicolosi - direct  
2 in the first time around. It was ruled that  
3 they couldn't be put in then, or partly,  
4 because Mr. Nicolosi was on the telephone and  
5 couldn't look at any documents that we were  
6 presenting him. But also because we were  
7 limiting ourselves to a very narrow set of  
8 issues during this first three days.

9 American Express' argument is  
10 going to be or is that it hasn't breached any  
11 obligation to Frank to allow him to retain  
12 his files because he didn't have that right  
13 because it violated American Express policy.

14 And I'm going to demonstrate by  
15 whatever means are available to me that, in  
16 fact, American Express' policy was the  
17 opposite. It was to permit retention of  
18 files. And that American Express has  
19 consistently permitted retention of files.  
20 And the only policy that I've ever seen, and  
21 I'm not sure if it was ever presented to this  
22 panel, but I know it was presented to the  
23 Eastern District, was a policy that was put  
24 into effect after Mr. Marzano terminated  
25 about six months after. About a year from

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1 Nicolosi - direct  
2 this month. A year ago this month.  
3 So this is the only witness that  
4 I'm going to get, I believe, who was a senior  
5 officer in the market group who deals with  
6 this addendum and the policies that have to  
7 be implemented by American Express in  
8 connection with the addendum and Mr. Marzano  
9 as well.

10 MR. ZARETSKY: So, in other  
11 words, I guess Mr. Campbell is saying the  
12 relevance of these documents is that they  
13 somehow demonstrate that American Express  
14 breached a contract that Mr. Marzano never  
15 signed with it. I don't understand.

16 MR. CAMPBELL: I didn't say that.

17 MR. ZARETSKY: If he's saying  
18 that these documents, they're forms, American  
19 Express cannot have breached a document, an  
20 unsigned agreement that it never signed with  
21 Mr. Marzano, Mr. Marzano's rights can't be  
22 created by a contract that he didn't have.

23 Now, I mean that will be an  
24 ultimate legal issue. But it seems to me  
25 from a relevance standpoint, right now at

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1 Nicolosi - direct  
2 this stage of the proceeding I haven't heard  
3 how these are relevant. And we would  
4 continue to maintain this objection.

5 MR. CAMPBELL: You heard what I  
6 said. I did not say that American Express  
7 breached these addenda. Because as I said,  
8 Frank didn't sign these addenda.

9 THE CHAIRMAN: Go ahead.

10 ARBITRATOR COHEN: Please  
11 continue.

12 MR. CAMPBELL: As part of its  
13 attempt to vacate the panel's earlier award  
14 with respect to the documents, American  
15 Express has presented to the District Court a  
16 privacy policy that it claims means that it  
17 cannot be held responsible for failing to  
18 provide copies and can't be required to  
19 provide copies of Mr. Marzano's client  
20 records to Mr. Marzano because of its privacy  
21 policy.

22 The only privacy policy that they  
23 put in is a privacy policy that was not in  
24 effect at the time Mr. Marzano left. And as  
25 a counter to that defense which they put in

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1 Nicolosi - direct  
2 already and I know is out there, and I'm  
3 going to address as part of my case in chief,  
4 I will demonstrate that American Express, in  
5 fact, permitted this, obligated itself  
6 contractually to permit this, and until last  
7 September 2004, did not have a policy with  
8 respect to privacy that prevented it from  
9 happening.

10 That is at the time Mr. Marzano  
11 left there was, the policy that American  
12 Express points to was not in effect.

13 THE CHAIRMAN: Forgive me, Mr.  
14 Campbell, but isn't that what we litigated  
15 back in the fall of last year and that you  
16 got a ruling from this panel which is now  
17 apparently taken to the District Court? I  
18 thought we're beyond that point now. That  
19 that ruling is still good as far as this  
20 arbitration goes. And that you're now at a  
21 different stage. And that is the stage of  
22 damages.

23 MR. CAMPBELL: A certain  
24 unclarity in my mind with respect to that,  
25 Mr. Chairman. But if it's the case that

54 (Pages 428 to 431)

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1 Nicolosi - direct  
2 we're no longer litigating the issue of  
3 breach on that part, I drop it.  
4 THE CHAIRMAN: Am I mistaken? I  
5 thought that had been resolved last time.  
6 MR. CAMPBELL: Res adjudicata,  
7 going forward. That's fine. I'll drop it.  
8 MR. ZARETSKY: So far as I  
9 understand it, the panel issued a decision  
10 and a temporary injunctive hearing which is  
11 what, last fall, was directing American  
12 Express to turn over copies of client files  
13 to Mr. Marzano. That's been decided.  
14 With all due respect, I don't  
15 know whether the panel decided there was a  
16 breach of any contract by American Express.  
17 There's an award that says turn over copies  
18 of the client files. And that's the award  
19 that we've challenged in the District Court  
20 because we believe it would force American  
21 Express to violate federal law. The  
22 Graham-Leach-Bliley Act.  
23 THE CHAIRMAN: To the extent the  
24 panel do not have to go to an award --  
25 MR. ZARETSKY: Understand that.

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1 Nicolosi - direct  
2 And I'm glad we cleared that up, Mr.  
3 Chairman. I thought I still had to do  
4 something, but apparently I didn't.  
5 BY MR. CAMPBELL:  
6 Q. Now, with respect to Mr. Marzano's  
7 specific agreement, Mr. Nicolosi, did you have any  
8 involvement, directly or indirectly, in negotiating  
9 it?  
10 A. No.  
11 Q. Did you sign it? I don't believe you  
12 did. Mr. Masciolo signed it, correct?  
13 A. What are you talking about?  
14 Q. The agreement that was made with Mr.  
15 Marzano.  
16 A. My signature is not on that.  
17 Q. Can you explain to the panel what you  
18 understand about the CPA Alliance program?  
19 A. CPA Alliance program, that was an  
20 initiative to attract CPAs into our business as  
21 financial advisors.  
22 Q. Was that a companywide initiative?  
23 A. It could have been done companywide,  
24 yes. It was available companywide.  
25 Q. Did you have any goals for 2004 that

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1 Nicolosi - direct  
2 THE CHAIRMAN: I think we can  
3 defer to the fact that documents told to be  
4 turned over to Mr. Marzano indicate that  
5 there was some right he had that had to be  
6 enforced. And that we were enforcing that  
7 right.  
8 I don't see why we're going over  
9 this again, Mr. Campbell.  
10 MR. CAMPBELL: I think you're  
11 right. Let me just clarify one point, Mr.  
12 Chairman. That wasn't a temporary injunction  
13 hearing last year. That was a final award on  
14 the injunction issued, full and complete.  
15 MR. ZARETSKY: I misspoke. It  
16 was a permanent injunction. But it was an  
17 injunction hearing.  
18 MR. CAMPBELL: It was a final  
19 award, we've all agreed on that, in the  
20 District Court. It's a final award. It can  
21 be vacated or confirmed as opposed to an  
22 interim award.  
23 MR. ZARETSKY: I misspoke.  
24 MR. CAMPBELL: Mr. Nicolosi,  
25 you're off the hook on Addendum 3-R and 3-V.

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1 Nicolosi - direct  
2 involved making specific progress with respect to  
3 the CPA Alliance program?  
4 A. There were no allocated goals for that.  
5 Q. How many CPAs were recruited into the  
6 CPA Alliance program in your product group?  
7 A. I can give you an approximation. I  
8 don't have an exact number. I don't know how  
9 accurate this is going to be. Maybe five, six.  
10 Q. In fact, wasn't Mr. Marzano the first  
11 CPA to be recruited into the CPA Alliance program in  
12 your market group?  
13 A. He could have been.  
14 Q. You don't have any understanding to the  
15 contrary; is that right?  
16 A. If you're asking me do I know he was  
17 the first, I don't recollect if he was the first.  
18 Q. Do you recollect that following his  
19 affiliation with American Express, Frank became  
20 something of a leader in your market group with  
21 respect to the CPA Alliance program?  
22 A. Yes.  
23 Q. In fact, he helped you to recruit those  
24 other CPAs; didn't he?  
25 A. He helped. He helped us, yes.

55 (Pages 432 to 435)



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1 Nicolosi - direct  
2 Q. He didn't only help your market group,  
3 he helped other market groups too; didn't he?  
4 A. Yes, he did.  
5 Q. He was in demand to go to market groups  
6 and give talks on the CPA Alliance program and how  
7 it could be utilized to benefit the company; isn't  
8 that right?  
9 A. He did go to other market groups and  
10 speak, yes.  
11 Q. He was in demand from other market  
12 groups; wasn't he?  
13 A. He was.  
14 Q. You didn't send him out to other market  
15 groups; did you?  
16 MR. ZARETSKY: There are two  
17 questions pending now.  
18 MR. CAMPBELL: I'm trying to help  
19 the witness. He seems to be confused.  
20 THE CHAIRMAN: One question at a  
21 time, Mr. Campbell, would help everyone.  
22 Q. Did you send him out to other market  
23 groups to "beat the drum" for the CPA Alliance  
24 program?  
25 A. He did go to other market groups.

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1 Nicolosi - direct  
2 Q. Because they asked for him or because  
3 you told him to go?  
4 A. Because they requested him.  
5 Q. He was in demand; wasn't he?  
6 A. If you want to say so, that's fine.  
7 Q. And you were happy to let him go  
8 because you perceived him as a useful tool for the  
9 CPA Alliance program; isn't that right?  
10 A. I didn't see anything wrong with  
11 letting him go.  
12 Q. Will you describe him as something of a  
13 posterboy for the program nationwide?  
14 A. I think he was recognized as supporting  
15 that initiative, yes.  
16 Q. And he was recognized throughout the  
17 company for that particular aspect?  
18 A. I don't know at what level he was  
19 recognized by.  
20 Q. I don't think Ken Chennault would  
21 recognize him. But among the market groups of vice  
22 presidents like yourself?  
23 A. I don't know to what extent other  
24 market groups knew of Frank.  
25 Q. Did you compensate Frank for his

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1 Nicolosi - direct  
2 activities in supporting the CPA Alliance program?  
3 A. I don't believe so.  
4 Q. Frank, in fact, was keen to do this on  
5 his own behalf; wasn't he?  
6 A. Yes.  
7 Q. He volunteered it to a large part?  
8 A. He did.  
9 Q. Do you remember a business opportunity  
10 related to PriceWaterhouseCoopers?  
11 A. What specific?  
12 Q. Do you recall a time when American  
13 Express was engaged to provide financial planning  
14 advice to the partners of PriceWaterhouseCoopers  
15 when PriceWaterhouseCoopers merged with another  
16 entity? Was it IBM?  
17 MR. MARZANO: When they sold IBM.  
18 Q. When they sold to IBM.  
19 A. I remember we had some initiative. I  
20 don't remember the specifics.  
21 Q. But it was, would you agree, a  
22 significant opportunity for American Express, and  
23 for those advisors who could be part of it?  
24 A. Sure.  
25 Q. A lot of partners at

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1 Nicolosi - direct  
2 PriceWaterhouseCoopers?  
3 A. Yes.  
4 Q. A lot of wealthy people?  
5 A. I would imagine.  
6 Q. In the New York market group, Frank was  
7 tagged to be your point person on that, wasn't he,  
8 among the advisors?  
9 A. I don't remember that.  
10 Q. You don't remember? You didn't have  
11 any role in deciding that?  
12 A. I may have. I just don't remember  
13 that.  
14 Q. Do you remember that, in fact, Frank  
15 was involved in your market group with the  
16 PriceWaterhouseCoopers partners in setting up the  
17 whole scheme for delivering this financial planning  
18 advice to the PriceWaterhouseCoopers partners?  
19 A. I don't recall who was involved with  
20 that.  
21 Q. To put your position in perspective,  
22 could you please tell us as of now, as of today  
23 under Ameriprise Financial, you told us the  
24 structure in your market group. GVP, six FVPs, and  
25 so on.

56 (Pages 436 to 439)

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1 Nicolosi - direct  
2 On the up, who is senior to you? Who  
3 do you report to?  
4 A. We have a senior vice president.  
5 Q. Who is that for your market group?  
6 A. Mike Woodward.  
7 Q. And above Mike Woodward, that's Mr.  
8 Cracciola?  
9 A. No. General sales manager.  
10 Q. Who's the general sales manager?  
11 A. Brian Heath.  
12 Q. And Mr. Heath reports to Mr. Cracciola;  
13 is that it?  
14 A. That is correct.  
15 Q. That hasn't changed when it was called  
16 AEFA, by the sounds of it?  
17 A. No.  
18 Q. I may have asked you this the first  
19 time around, but we don't have a transcript so I  
20 want to make sure that we have it on the record  
21 here.  
22 Can you tell us, please, where in the  
23 rankings by production Frank Marzano stood in the  
24 market group as of March 2004?  
25 A. He was one of our top advisors.

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1 Nicolosi - direct  
2 Q. One of the top 10?  
3 A. Yes.  
4 Q. How long had he been a top 10 advisor  
5 as of March 2004?  
6 A. I don't remember.  
7 Q. Do you know what his standing was in  
8 2003?  
9 A. I don't remember his exact standing.  
10 No.  
11 Q. But you do know that he joined American  
12 Express in the year 2000?  
13 A. Hmm-hmm.  
14 Q. By the year 2004 he was one of the top  
15 10 advisors in your market group?  
16 A. Yes.  
17 Q. In American Express as a whole, where  
18 does your marketing group rank by production/GDC?  
19 A. Currently?  
20 Q. No. Let's say as of March 2004.  
21 A. We were 1, 2, or 3.  
22 Q. You were either number 1 or number 2,  
23 or number 3?  
24 A. Yes.  
25 Q. By number of advisors in March 2004,

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1 Nicolosi - direct  
2 same thing; 1, 2, or 3?  
3 A. In the top 5.  
4 Q. And the company tracks advisors  
5 companywide ranking by production also; doesn't it?  
6 A. Yes.  
7 Q. Do you recollect where Mr. Marzano was  
8 companywide in March 2004?  
9 A. He was considered one of the top  
10 advisors. I don't know what his rank was.  
11 Q. Top 50?  
12 A. He could have been top 50.  
13 Q. Would you agree that within American  
14 Express as it was at the time that it was something  
15 of a record for an advisor to join as a newcomer to  
16 the business and in four years become a top 50  
17 producer?  
18 MR. ZARETSKY: Mr. Chairman, at  
19 this point I have to say, and I know we have  
20 time constraints, what is the relevance of  
21 whether it was a record for Mr. Marzano to  
22 become a top 50 in the company producer  
23 within four years?  
24 THE CHAIRMAN: Mr. Campbell.  
25 MR. CAMPBELL: As I think I've

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1 Nicolosi - direct  
2 already explained and will be explaining more  
3 in detail when Mr. Marzano testifies, we're  
4 going to show that he had an upward  
5 trajectory momentum that was toppled in 2004  
6 because of the breaches by American Express.  
7 And is part of the measure of damages.  
8 THE CHAIRMAN: Go ahead, Mr.  
9 Campbell.  
10 THE WITNESS: Could you rephrase  
11 the question.  
12 Q. It's something of a record at American  
13 Express for a new advisor, new to the business,  
14 within four years to become a top 50 nationwide  
15 producer?  
16 A. I don't know if it was a record. But  
17 it was a great accomplishment.  
18 Q. The CPA Alliance, was that closed down?  
19 A. That is, as of right now, shut down,  
20 yes.  
21 Q. Was it shut down shortly after Mr.  
22 Marzano separated?  
23 A. I believe it shut down either just  
24 prior to or after. I'm not sure of the time line.  
25 But it was in that --

57 (Pages 440 to 443)

Page 444

1 Nicolosi - direct  
2 Q. General time period?  
3 A. General time period. Might have been  
4 before. I'm not sure.  
5 Q. Let's see if I brought it.  
6 Would you agree, Mr. Nicolosi, that the  
7 client files created by an advisor as part of his  
8 financial planning practice are an important tool  
9 for use in servicing the clients?  
10 A. Yes.  
11 Q. Would you agree that if you didn't, for  
12 example, you as a market group vice president after  
13 an advisor leaves and you had the task of ensuring  
14 that the clients were properly serviced following  
15 the advisor's termination, that you would be  
16 significantly hampered in your ability to do that if  
17 you didn't have the client files?  
18 A. I would want the client files.  
19 Q. Say again?  
20 A. I would want the client filings.  
21 Q. In fact, wouldn't you agree that you  
22 would need the client files in order to ensure that  
23 the clients are properly serviced?  
24 A. Yes.  
25 Q. American Express requires advisors to

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1 Nicolosi - direct  
2 A. Yes.  
3 Q. When did you become aware?  
4 A. My recollection is sometime in March  
5 of that year.  
6 Q. Do you have a specific date or event in  
7 mind that led to you becoming aware?  
8 A. I don't know the exact date.  
9 Q. Did you get anything in writing  
10 informing you?  
11 A. I don't believe so.  
12 Q. Did you have any role in connection  
13 with that investigation?  
14 MR. ZARETSKY: Object to the  
15 form. I think he asked the question  
16 originally, internal review.  
17 MR. CAMPBELL: I apologize if I  
18 slip from one to the other.  
19 Q. I mean to reference, Mr. Nicolosi, the  
20 internal review that you described.  
21 A. That I described?  
22 Q. Well, that I described and you agreed  
23 that you became aware of.  
24 A. Okay.  
25 Q. Did you get anything in writing

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1 Nicolosi - direct  
2 maintain comprehensive files on their clients; don't  
3 they?  
4 A. Yes.  
5 Q. All the notes of meetings are required  
6 to be retained in the files?  
7 A. Yes.  
8 Q. All the communications back and forth  
9 between the clients and the advisor are required to  
10 be maintained in the file?  
11 A. Yes.  
12 Q. Financial plans are required to be  
13 maintained in the file?  
14 A. Yes.  
15 Q. American Express expects to have those  
16 files available for it to give to other advisors  
17 should an advisor leave, right?  
18 A. Yes.  
19 Q. Now, directing your recollection to  
20 March of 2004.  
21 Did you become aware of an internal  
22 review that was commenced by American Express into  
23 Mr. Marzano?  
24 MR. ZARETSKY: It's a yes or no.  
25 Just say no.

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1 Nicolosi - direct  
2 informing you that an internal review was initiated?  
3 A. Not to my recollection.  
4 Q. Can you tell us how you became aware  
5 that the internal review had been initiated?  
6 A. My recollection --  
7 MR. ZARETSKY: I'm just going to  
8 object, Mr. Chairman. Or note that I would  
9 like the witness to be admonished that to the  
10 extent that it might require him to disclose  
11 matters that we've been discussing obviously  
12 before Mr. Nicolosi got here that implicated  
13 the USA Patriot Act, the Bank Secrecy Act, to  
14 the extent that this answer might require him  
15 to disclose information about that, that the  
16 witness should not disclose that, even though  
17 the question might call for it.  
18 THE CHAIRMAN: Do you understand  
19 your counsel's comment, Mr. Nicolosi?  
20 THE WITNESS: I think so.  
21 THE CHAIRMAN: With that  
22 admonishment, go ahead, Mr. Campbell.  
23 Q. What was the question?  
24 How did you become aware that an  
25 internal review had been initiated?

58 (Pages 444 to 447)



Page 448

1 Nicolosi - direct  
2 A. Through a phone call.  
3 Q. From who?  
4 A. My recollection is Tim Dodds.  
5 Q. In the home office?  
6 A. Hmm-hmm.  
7 Q. Had there been prior to this date in  
8 March, whatever date it was, had there been any  
9 other internal review of Mr. Marzano?  
10 A. Not to my recollection.  
11 Q. Are you aware of any compliance issues  
12 relating to Mr. Marzano before you got notice that  
13 an internal review had been initiated?  
14 A. Compliance issues?  
15 Q. With respect to Mr. Marzano, yes.  
16 A. There was an issue related to some  
17 corporation that he had.  
18 Q. His CPA practice?  
19 A. Yes. I don't recall exactly. He had a  
20 corporation that the company wanted him to dissolve.  
21 And that was an issue that was compliance related.  
22 Q. Is that the only one that you can  
23 recollect?  
24 A. The only one that comes to mind.  
25 Q. That compliance related issue, it was

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1 Nicolosi - direct  
2 addressed by the company and by Frank?  
3 A. In the process of.  
4 Q. You were in the process of addressing  
5 it?  
6 A. Yes. It wasn't fully resolved yet.  
7 Q. Did that particular issue result in the  
8 initiation of an internal review?  
9 A. I don't know that.  
10 Q. Well, did you initiate any internal  
11 review within the market group as opposed to being  
12 initiated from outside the market group with respect  
13 to that compliance issue with Mr. Marzano?  
14 A. I did not.  
15 Q. In March 2004, compliance at American  
16 Express is accomplished as an initial matter through  
17 Series-24 individuals who called themselves OSJs;  
18 isn't that correct?  
19 A. Registered principals.  
20 Q. Yes.  
21 And the OSJs were, tell me, were they  
22 employees of American Express?  
23 A. Some were and some were not.  
24 Q. Some were independent franchisees?  
25 A. Yes.

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1 Nicolosi - direct  
2 Q. With respect to these OSJs, what was  
3 the arrangement pursuant to which, for example, Mr.  
4 Marzano was supervised by such a registered  
5 principal?  
6 A. What do you mean by that?  
7 Q. Was there an arrangement? Did you  
8 assign an OSJ to Frank? Did Frank pick his own OSJ?  
9 How did it work?  
10 A. We approved who the registered  
11 principals are. And then the advisor contracts  
12 either with the market group who would work for the  
13 market group as an employee in the company or the  
14 independent registered principal.  
15 Q. So you approved a group of people to be  
16 the registered principals in the market group. Some  
17 employees, some franchisees. Then the franchisee  
18 gets to choose from among those people who to  
19 contract with for OSJ services; is that right?  
20 A. For the most part.  
21 Q. If it's a market group employee, then  
22 that's something that generates income for the  
23 market group?  
24 A. Yes.  
25 Q. And if it's with a franchisee it

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1 Nicolosi - direct  
2 generates income for the franchisee?  
3 A. Yes.  
4 Q. Can you tell the panel, please, in  
5 2000, well, to 2004, who was Mr. Marzano's OSJ?  
6 A. I don't know that I can recall.  
7 Q. Did he have just one OSJ during that  
8 time period, or was it more than one?  
9 A. I can't answer your question.  
10 Q. Do you know whether or not he had, for  
11 example, six OSJs in a four-year period?  
12 A. I can't answer that question.  
13 Q. You don't know?  
14 A. I don't recall.  
15 Q. If somebody keeps switching from one  
16 OSJ to another, isn't that itself a compliance  
17 issue?  
18 You have to wonder why does he keep  
19 switching?  
20 A. Could be.  
21 Q. In fact, it's something that American  
22 Express doesn't permit, isn't it; switching from one  
23 OSJ to another too frequently?  
24 A. We would limit that.  
25 Q. You would limit that. Right.

59 (Pages 448 to 451)

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1 Nicolosi - direct  
2 So if Frank had six or seven OSJs in a  
3 four-year period, would you agree that that would  
4 have to be something that the market group  
5 countenanced/permitted?  
6 A. We would have had to have approved  
7 that.  
8 Q. Are you aware whether or not OSJs that  
9 were contracting with Frank during the period 2000  
10 to 2004 were resigning as OSJs, giving up the  
11 position?  
12 A. I don't recall. I don't recall.  
13 Q. Do you recall Mary Beth Sharkey?  
14 A. Yes.  
15 Q. Was she an OSJ for Frank during some  
16 period of time?  
17 A. I'd have to check that.  
18 Q. You don't recall?  
19 A. Right.  
20 Q. Was Mary Beth Sharkey an OSJ in 2004?  
21 A. Yes.  
22 Q. Was she an OSJ in 2003?  
23 A. I don't recall when she started.  
24 Q. How about Clarence MacMaster. Do you  
25 recall Clarence MacMaster?

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1 Nicolosi - direct  
2 A. Yes.  
3 Q. Was he an OSJ?  
4 A. He was.  
5 Q. Do you know if he was an OSJ for Frank?  
6 A. I don't know.  
7 Q. Is Mr. MacMaster still an OSJ with a  
8 Ameriprise now as it's known?  
9 A. No.  
10 Q. How about Robert Priest.  
11 Do you remember Robert Priest as an OSJ  
12 at American Express?  
13 A. I don't recall if Bob was an OSJ.  
14 Q. You do recall a Bob Priest. You don't  
15 remember if he was an OSJ?  
16 A. I do recall a Bob Priest. Yes.  
17 Q. How about Stephen Gary, Steve Gary?  
18 A. Steve Gary was an OSJ. A registered  
19 principal for us.  
20 Q. Do you know if he was a registered  
21 principal for Frank?  
22 A. I don't know.  
23 Q. How about John Stolanski?  
24 A. He was a field compliance specialist.  
25 He's a field compliance specialist.

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1 Nicolosi - direct  
2 Q. Which is a Series-24 employed by the  
3 marketing group?  
4 A. Yes.  
5 Q. Do you know if he was the Series-24,  
6 the OSJ for Frank during any period of time?  
7 A. I'd have to check that out.  
8 Q. The people we've just mentioned,  
9 Sharkey, Priest, Gary, and Stolanski, are they still  
10 all with American Express/ Ameriprise?  
11 A. As employees or just affiliated with  
12 them?  
13 Q. Just affiliated with.  
14 A. Give me those names again.  
15 Q. You told us MacMaster is not.  
16 A. Right.  
17 Q. So leave him out. Mary Beth Sharkey?  
18 A. She is.  
19 Q. Bob Priest?  
20 A. No longer.  
21 Q. Steve Gary?  
22 A. He is still with us.  
23 Q. John Stolanski?  
24 A. He is no longer with us.  
25 Q. Was it, in fact, the case during the

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1 Nicolosi - direct  
2 period 2000 to 2004 that the OSJs were charged with  
3 compliance supervision of the practice of those  
4 franchisees that contracted with  
5 him for OSJ services?  
6 A. Yes.  
7 Q. And as part of that, every year there  
8 would be a compliance audit, right?  
9 A. Yes.  
10 Q. And there would be a compliance audit  
11 file crated by the OSJ for each franchisee that the  
12 OSJ works for or works with?  
13 A. Yes.  
14 Q. And the compliance audit would have  
15 addressed any compliance issues and set out a scheme  
16 for curing any problems. And there would be a  
17 follow-up to see whether or not they'd be taken care  
18 of; is that right?  
19 A. Yes.  
20 Q. And if there were any serious issues,  
21 then they would go up the line, up the compliance  
22 line to the market group?  
23 A. Yes.  
24 Q. Do you recollect at any time during  
25 2000 to 2004 there being an audit of Frank Marzano's

60 (Pages 452 to 455)

Page 456

1 Nicolosi - direct  
2 office that related in compliance issues that had to  
3 go up the line to the market group?  
4 A. No.  
5 Q. Now, let's get back to the internal  
6 review.  
7 Were you a part of the team undertaking  
8 the internal review that you learned about sometime  
9 in March of 2004?  
10 A. No.  
11 Q. Was anybody from the market group or on  
12 your behalf a part of that team?  
13 A. No.  
14 Q. You say there was no representative of  
15 the market group involved?  
16 A. To my recollection, no.  
17 Q. Was Mary Beth Sharkey involved in any  
18 way in the internal review?  
19 A. I don't know what her role -- I don't  
20 know if she was or not.  
21 Q. Do you know if she was a subject of the  
22 internal review since it involved one of her  
23 franchisees?  
24 MR. ZARETSKY: Objection. I  
25 think to the extent the internal review

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1 Nicolosi - direct  
2 encompasses this issue we've been addressing,  
3 to disclose subjects of it could be violating  
4 the law.  
5 THE CHAIRMAN: Yes.  
6 MR. CAMPBELL: Mr. Chairman,  
7 think about it. The internal review is not  
8 secret. It's not private. It's reported,  
9 testified about. The fact that Mr. Marzano  
10 is a subject of the internal review purported  
11 testified to, it's just a fact about the  
12 internal review.  
13 THE CHAIRMAN: What about this  
14 other individual? What does she have to do  
15 with this?  
16 MR. CAMPBELL: Well, she was his  
17 OSJ. If there's a compliance issue, one of  
18 these obvious questions that will arise is,  
19 well, did the Series-24, did the registered  
20 principal fall down on the job. Was the  
21 registered principal also being reviewed for  
22 potential failure to supervise?  
23 THE CHAIRMAN: I don't see the  
24 relevance. I'm sorry.  
25 MR. CAMPBELL: Okay. I am just

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1 Nicolosi - direct  
2 trying to identify the scope, to the extent I  
3 can, without going beyond the bounds where  
4 I've been told I can't go.  
5 Q. Did you have communications with Frank  
6 about the internal review?  
7 A. When you say did I have communications,  
8 to what respect?  
9 Q. With respect to the internal review.  
10 A. The content?  
11 Q. Just did you have communications with  
12 Frank?  
13 A. Did I speak to Frank? I did speak to  
14 Frank.  
15 Q. About what did you speak to Frank in  
16 connection with the internal review?  
17 A. That he had to make himself available.  
18 Q. Well, you're the person who told him  
19 initially that he had to turn up to a meeting?  
20 A. Yes.  
21 Q. Tell the panel what you told him and  
22 what Frank said to you during that conversation when  
23 you first told him that he had to turn up for a  
24 meeting.  
25 A. I have no recollection.

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1 Nicolosi - direct  
2 THE CHAIRMAN: I'm sorry, I can't  
3 hear you.  
4 A. I have no recollection of that  
5 conversation.  
6 Q. Did you tell him that he had to come to  
7 a meeting downtown?  
8 A. Yes.  
9 Q. And that it was mandatory?  
10 A. Yes.  
11 Q. Mandatory meaning, you don't turn up  
12 you're fired?  
13 A. No.  
14 Q. Mandatory in what sense?  
15 A. Required.  
16 Q. Such that if you don't do it, what are  
17 the consequences?  
18 MR. ZARETSKY: I'm sorry. Is the  
19 question --  
20 Q. Are there consequences to not turning  
21 up to a mandatory required meeting?  
22 MR. ZARETSKY: Just a  
23 clarification. I just wanted to know is he  
24 asking the witness whether he told Mr.  
25 Marzano that or is he just wanting to know

61 (Pages 456 to 459)



Page 460

1 Nicolosi - direct  
2 Mr. Nicolosi's state of mind at the time?  
3 MR. CAMPBELL: I want to know  
4 what he meant.  
5 THE CHAIRMAN: State of mind, is  
6 that what you're saying, Mr. Campbell?  
7 MR. CAMPBELL: What he meant.  
8 What did he mean when he said it was  
9 mandatory.  
10 THE CHAIRMAN: Go ahead, Mr.  
11 Nicolosi.  
12 THE WITNESS: You want me to  
13 answer?  
14 MR. ZARETSKY: If you can.  
15 A. What I meant, it was a  
16 compliance-related issue. And he was required to  
17 show up.  
18 Q. Did you tell him there will be any  
19 consequences?  
20 A. I don't recall.  
21 Q. If he had not turned up, what did you  
22 believe or intend would happen once you told him  
23 that it was a mandatory meeting?  
24 A. What do I speculate would have  
25 happened?

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1 Nicolosi - direct  
2 Q. Well, would anything have happened as  
3 you understand it?  
4 A. What I would speculate would have  
5 happened?  
6 MR. ZARETSKY: I don't think the  
7 witness should be called upon to speculate,  
8 Mr. Chairman. I'll object to that. All he  
9 knows is speculation. That's not proper.  
10 MR. CAMPBELL: He doesn't know.  
11 Just speculation. He has to know what he  
12 meant. He said it meant required. What does  
13 required mean?  
14 MR. ZARETSKY: He already  
15 answered that question.  
16 MR. CAMPBELL: No, he didn't.  
17 It's a compliance-related meeting and it's  
18 required that you show up.  
19 What does required mean?  
20 THE CHAIRMAN: Like the previous  
21 question, if he didn't turn up, what would it  
22 have meant to you, Mr. Nicolosi?  
23 THE WITNESS: They would have  
24 attempted to set up a meeting. Find out why  
25 he didn't show up. And attempt to set up

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1 Nicolosi - direct  
2 another meeting.  
3 Q. So it wasn't required?  
4 A. It was required.  
5 MR. CAMPBELL: Okay. I guess  
6 that's as far as I'll get on that one.  
7 Q. Tell him anything else?  
8 A. I don't recall.  
9 Q. Tell him it was confidential?  
10 A. Probably.  
11 Q. Tell him not to tell anybody else, not  
12 to discuss it with anybody?  
13 A. Probably.  
14 Q. You didn't just have this conversation  
15 with Frank Marzano; did you?  
16 You had it with about a dozen other  
17 people?  
18 MR. ZARETSKY: Objection. The  
19 conversation in which Mr. Marzano was a  
20 party?  
21 MR. CAMPBELL: No. The  
22 conversation where you called up advisors  
23 during the same period of time in March 2004  
24 and told them you have to turn up to a  
25 compliance meeting. It's mandatory.

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1 Nicolosi - direct  
2 MR. ZARETSKY: I'm going to  
3 object to anything beyond yes or no. But as  
4 to yes or no, I won't object to that.  
5 A. Yes.  
6 Q. I think I used the number of about a  
7 dozen. Is that about the right number?  
8 MR. ZARETSKY: I'm going to  
9 object to that. That's getting too specific.  
10 THE CHAIRMAN: Without names,  
11 about a dozen, give or take?  
12 THE WITNESS: Approximately.  
13 THE CHAIRMAN: Approximately.  
14 That's generally.  
15 MR. CAMPBELL: I take it, Mr.  
16 Chairman, that you're indicating that if I  
17 ask names there will be an objection and it  
18 will be sustained?  
19 THE CHAIRMAN: Unless you point  
20 out the relevance of it.  
21 MR. CAMPBELL: Well, let me ask  
22 it without asking for the specific names.  
23 See if anybody thinks it's relevant.  
24 Q. All of the people that you had this  
25 conversation with to turn up to a meeting that was a

62 (Pages 460 to 463)

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1 Nicolosi - direct  
2 mandatory compliance meeting, they were all  
3 Italians; weren't they?  
4 MR. ZARETSKY: Objection. Mr.  
5 Chairman, what's the relevance in that?  
6 THE CHAIRMAN: Mr. Campbell, I  
7 don't remember seeing anything like that in  
8 the pleadings.  
9 Are you now raising a different  
10 cause of action?  
11 MR. CAMPBELL: I can't remember  
12 if it's there. But I think we did mention  
13 that only people of Italian surnames were  
14 involved.  
15 THE CHAIRMAN: I have to review  
16 the pleadings. I just don't remember that.  
17 MR. CAMPBELL: Can I still have  
18 an answer to the question?  
19 THE CHAIRMAN: No.  
20 MR. ZARETSKY: I don't think I  
21 can permit that to be answered, Mr. Chairman.  
22 MR. CAMPBELL: Everybody was  
23 Italian. What's wrong with that? How's that  
24 get specific?  
25 MR. ZARETSKY: I would instruct

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1 Nicolosi - direct  
2 Q. And you wouldn't tell him anything  
3 else?  
4 A. No.  
5 Q. Was there an issue of failure to  
6 supervise in the internal review?  
7 MR. ZARETSKY: Can I just have a  
8 moment, please.  
9 THE CHAIRMAN: Sure.  
10 MR. ZARETSKY: Mr. Chairman, I'm  
11 sorry, I just wanted to double-check the  
12 FinCEN article and the letter because I  
13 didn't want to invade that.  
14 Can I have the question read  
15 back. I don't think it's objectionable. I  
16 want to just hear it again.  
17 (Question read.)  
18 A. They did review the supervision.  
19 Q. Ultimately, are you the person  
20 ultimately responsible for compliance in your market  
21 group?  
22 A. Yes, I am.  
23 Q. You're not saying that you were  
24 reviewed; are you?  
25 A. Yes, I am.

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1 Nicolosi - direct  
2 him not to answer.  
3 THE CHAIRMAN: Mr. Chairman, you  
4 want to point out where that's in the  
5 pleadings that's become an issue before this  
6 panel?  
7 MR. CAMPBELL: Before going down  
8 that track any more today, I will find that  
9 out and show it to you, and then decide  
10 whether or not there's any further to go.  
11 Q. Mr. Nicolosi, I take it that this  
12 compliance investigation/compliance review that Mr.  
13 Marzano was, quote, gone up to.  
14 Withdraw that. I'd forgotten where I  
15 was going.  
16 Did Frank ask you what the subject of  
17 the meeting was?  
18 A. I don't recall.  
19 Q. Did he ask you why he had to be there?  
20 A. Probably.  
21 Q. What's going on, questions like that?  
22 A. Hmm-hmm.  
23 Q. And you didn't tell him, right?  
24 A. I believe I told him it was compliance  
25 related.

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1 Nicolosi - direct  
2 Q. Can you recollect how many  
3 conversations you had with Mr. Marzano between that  
4 initial conversation where you told him you had to  
5 turn up to the first meeting and when Mr. Marzano  
6 resigned?  
7 A. I don't recall.  
8 Q. Do you recall having any conversations?  
9 A. Yes.  
10 Q. Can you tell us what you recall was the  
11 content of any of the conversations that you had  
12 between that initial conversation and Frank's  
13 resignation?  
14 A. Mostly --  
15 MR. ZARETSKY: Can I just have  
16 the question read back. I'm sorry.  
17 (Question read.)  
18 MR. ZARETSKY: Mr. Chairman, I  
19 would want to have an admonition to the  
20 witness in the article. Just because we've  
21 been using it as sort of a guideline at  
22 least. And I'm using it as a guideline for  
23 what we think we can and cannot allow our  
24 clients testify to, five of the things that  
25 are enumerated that can't be, that are

63 (Pages 464 to 467)

Page 468

1 Nicolosi - direct  
2 protected by this privilege among others are  
3 communications preceding the filing of the  
4 SAR or preparatory to it.  
5 I just would want the witness to  
6 be admonished if it has anything to do with  
7 these matters raised by the Patriot Act, the  
8 Bank Secrecy Act, things of that nature, that  
9 he cannot disclose communications regarding  
10 that.  
11 THE CHAIRMAN: With the  
12 understanding that maybe communications that  
13 he can disclose if they don't affect the Bank  
14 Secrecy Act.  
15 MR. ZARETSKY: Correct. I don't  
16 know what the answer's going to be. But I  
17 just wanted that admonition to be there.  
18 THE CHAIRMAN: Do you understand,  
19 Mr. Nicolosi?  
20 THE WITNESS: Yes.  
21 THE CHAIRMAN: Thank you.  
22 MR. CAMPBELL: Again, I'm going  
23 to put on the record my objection to this  
24 whole process. I think it's just purely  
25 obstructive since there has been no testimony

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1 Nicolosi - direct  
2 in any way, shape, or form about the filing  
3 of a SAR. It is completely improper and  
4 purely obstructive to interject the filing of  
5 a SAR as a shield to asking questions. And  
6 the only time you hear about filing of a SAR  
7 is from American Express putting its shield  
8 up. Nobody's gone anywhere near testifying  
9 that there was or there wasn't. Just  
10 obstruction. It's a good way to put forward  
11 his witness inside the hearings that would  
12 otherwise just not be allowed.  
13 MR. ZARETSKY: Just, with due  
14 respect, Mr. Chairman...  
15 THE CHAIRMAN: Mr. Zaretsky, if I  
16 may, Mr. Campbell, we did have witnesses  
17 yesterday testify about possible violations  
18 separate and apart from SARs. So I think we  
19 have managed to maneuver around that without  
20 any problem.  
21 MR. CAMPBELL: Yes. The point is  
22 there's no evidence there was a SAR. So if  
23 it doesn't exist how can you use it as a  
24 shield to going into the facts of a  
25 conversation that he had with this guy who

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1 Nicolosi - direct  
2 can testify to it.  
3 THE CHAIRMAN: Representations  
4 made by counsel and officers of the court  
5 that it may be an issue or violation of a  
6 federal statute. I can accept that. And we  
7 can proceed with the questions.  
8 Before we do proceed, we do owe a  
9 phone call. Apparently there was a phone  
10 call to the NASD administrator. We're going  
11 to take a few-minute break while Mr. Cohen  
12 makes the phone call.  
13 MR. GOOD: Before we do that, it  
14 is only appropriate that I apologize to the  
15 panel. I think earlier today I said some  
16 things that maybe was inappropriate. But as  
17 a way of mea culpa, let me just tell the  
18 panel that. And I don't mean to characterize  
19 what Mr. Campbell said, but at the time I  
20 took Mr. Campbell's comments to be a little  
21 grandstanding on his part, trying to kick  
22 some dirt on American Express about their  
23 inability to appear in May of this past year  
24 for the hearings. And that what was going on  
25 this morning was in some way American Express

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1 Nicolosi - direct  
2 being inappropriate in their conduct.  
3 Number one, Mr. Campbell knows  
4 darn well in May of this past year, this year  
5 my mother passed away. And that was the  
6 reason why we were unable to go on.  
7 ARBITRATOR COHEN: Excuse me. Is  
8 this a conversation with the witness in the  
9 room?  
10 MR. GOOD: If you want to excuse  
11 the witness, that's fine. That's okay.  
12 THE CHAIRMAN: Step outside Mr.  
13 Nicolosi. Because we do have some other  
14 business transactions, that phone call I  
15 mentioned.  
16 (Whereupon, the witness left the  
17 hearing room.)  
18 MR. GOOD: And frankly, it hit a  
19 little raw nerve and was a little visceral of  
20 a response. And I just kind of felt watching  
21 what was going on this morning, Mr. Campbell  
22 kept placing the blame on us that we were  
23 being unreasonable in our position. And I  
24 did not believe that. And I responded likely  
25 in an inappropriate way. And I want to offer

64 (Pages 468 to 471)



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1 Nicolosi - direct  
2 my apologies to the panel.  
3 THE CHAIRMAN: Thank you, Mr.  
4 Good. I don't believe that the panel took  
5 any offense to anything that happened this  
6 morning. I know I didn't.  
7 MR. GOOD: I appreciate that.  
8 But I think my emotions took over. And that  
9 was inappropriate and unprofessional.  
10 THE CHAIRMAN: It's an emotional  
11 business. Take a few-minute break while Mr.  
12 Cohen makes that phone call.  
13 (Short recess.)  
14 THE CHAIRMAN: We're adjourned  
15 for the day.  
16 (Time noted: 4:30 p.m.)  
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1 September 14, 2005  
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I N D E X

W I T N E S S E S

RESPONDENT'S	DIRECT	CROSS	REDIRECT	RECROSS
ANTHONY MAZZEI	258	269	294	298
FERDINAND RUPLIN	303	327	372	375
RICHARD KUNDRACIK	380	395	398	
THOMAS NICOLOSI	400			

E X H I B I T S

RESPONDENT'S	
FOR ID. DESCRIPTION	PAGE
5	311
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E X H I B I T S

CLAIMANT'S		PAGE
FOR ID. DESCRIPTION		
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C E R T I F I C A T E

I, Robert Levine, Court Reporter and Notary Public, hereby certify that the proceedings herein are from the notes taken by me in this matter of the aforementioned case; and that this is a correct transcription of the same.

IN WITNESS WHEREOF, I have Hereunto set my hand this 15th day of September, 2005.

Robert M. Levine

65 (Pages 472 to 475)